

**HAWAII PUBLIC HOUSING AUTHORITY  
NOTICE OF MEETING  
REGULAR BOARD OF DIRECTORS MEETING  
1002 North School Street, Building E  
Honolulu, Hawaii 96817**

**April 18, 2013  
9:00 a.m.**

**AGENDA**

**I. CALL TO ORDER/ROLL CALL**

**II. APPROVAL OF MINUTES**

- A. Regular Meeting Minutes, March 21, 2013 (*Pages 1-15*)
- B. Executive Session Minutes, March 21, 2013 (not for public release)

**III. PUBLIC TESTIMONY**

Public testimony on any item relevant to this agenda shall be taken at this time. Pursuant to section 92-3, Hawaii Revised Statutes, and section 17-2000-18, Hawaii Administrative Rules, the Board may limit public testimony to three minutes.

**IV. FOR ACTION**

- A. Motion: To Reappoint Ms. Elaine Watai to the Hawaii Public Housing Authority's Kona Eviction Board for a Two-Year Term Expiring on May 31, 2015 (*Pages 16-19*)
- B. Motion: To Amend the January 17, 2013 Regular Meeting Minutes Previously Approved by the Board of Directors of the Hawaii Public Housing Authority (*Pages 20-29*)
- C. Motion: To Adopt Amendments to and Compilation of Chapter 17-2028 "Federally-Assisted Housing Projects", Hawaii Administrative Rules and to Authorize the Executive Director to Undertake All Actions Necessary under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01 to Implement the Amendments (*Pages 30-66*)

(All proposed revisions have been reviewed by the Department of the Attorney General.)

- D. Motion: To Adopt Amendments to and Compilation of Chapter 17-2020 “Evictions – Practice and Procedure”, Hawaii Administrative Rules, and to Authorize the Executive Director to Undertake All Actions Necessary under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01, to Implement the Amendments (*Pages 67-93*)

(All proposed revisions have been reviewed by the Department of the Attorney General.)

- E. Motion: To Adopt Amendments to and Compilation of Chapter 15-185-25 “Section 8 - Housing Choice Voucher Program”, Hawaii Administrative Rules, and Adopt Amendments to the Section 8 Housing Choice Voucher Program’s Administrative Plan to Remove Waitlist Preferences, to Update all Chapter Numbers, and Update References to Applicable State Statutes and Federal Regulations, Subject to Review by the Department of the Attorney General; and to Authorize the Executive Director to Take All Actions Necessary Under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01, to Implement the Amendments, including Amending the Rules to Incorporate Revisions Recommended by the Department of the Attorney General (*Pages 94-164*)
- F. Motion: To Amend the Section 8 Housing Choice Voucher Program’s Administrative Plan and the Federal Public Housing Program’s Admissions and Continued Occupancy Policy Regarding Income Verification Hierarchy Guidelines and to Authorize the Executive Director to Undertake All Steps Necessary to Effect such Changes (*Page 165-217*)

## V. REPORTS

- A. Executive Director’s Report: (*Pages 218-262*)

Updates and Accomplishments Related to Public Housing Occupancy, Maintenance Repairs; Design and Construction Project Updates; Review of Financial Contracts & Procurements Executed During March 2013; Staffing; Rent Collections and Evictions; and Follow-Up Report on Board Inquiries; Request for Finance Task Force to Review Operating Budget for FY 2013 – 2014; Audited Financial Data Schedule Submitted to HUD; PHA Plan Certifications and Salary Comparability Task Force

## VI. FOR DISCUSSION/INFORMATION

- A. For Information: *Kolio, et al v. State of Hawaii, Hawaii Public Housing Authority Denise Wise in Her Official Capacity As Executive Director (Civil Case No. CV11-00266 and Civil No. 11-1-0795) (Page 263)*

The Board may go into executive session pursuant to Hawaii Revised Statutes sections 92-4 and 92-5(a)(4) to consult with the Board's attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as related to *Kolio, et al v. State of Hawaii, Hawaii Public Housing Authority; Denise Wise In Her Official Capacity As Executive Director (Civil Case No. CV11-00266 and Civil No. 11-1-0795)*.

- B. For Discussion: Status and Updates of the Federal Section 8 Voucher and Project Based Contract Administration (PBCA) Program (**Page 264**)

The Board may go into executive session pursuant to Hawaii Revised Statutes sections 92-4 and 92-5(a)(4) to consult with the Board's attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities related to the PBCA program.

- C. For Discussion: To Seek Board Input on Proposed Revision to the Hawaii Public Housing Authority's Policy Regarding Retraction of Section 8 Housing Choice Vouchers from Families Most Recently Issued Vouchers to Retraction of Vouchers from Families Who Have Been on the Section 8 Program the Longest (**Pages 265-266**)

- D. For Discussion: Update on Status of Ke Kumu (**Page 267**)

The Board may go into executive session pursuant to Hawaii Revised Statutes sections 92-4 and 92-5(a)(4) to consult with the Board's attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

April 18, 2013

## **FOR ACTION**

**MOTION:** To Reappoint Ms. Elaine Watai to the Hawaii Public Housing Authority's Kona Eviction Board for a Two-Year Term Expiring on May 31, 2015

### **I. FACTS**

- A. The Oahu and Neighbor Island Eviction Boards are composed of members of the community who are responsible for affording public housing tenants a full and fair due process hearing during lease termination proceedings.
- B. Pursuant to the Hawaii Revised Statutes (HRS) 356D-93, the Authority is authorized to appoint an eviction board which shall consist of not less than one person, and no more than three persons, of which one shall be a resident of public housing.
- C. Having more than the minimum amount of members appointed to the Oahu and Neighbor Island Eviction Boards will allow the Hearings Office to process the requests for hearings in an efficient and timely manner, and avoid cancellation of hearings for lack of quorum.
- D. Attached is a list of the current eviction board members by county and term appointments.

### **II. DISCUSSION**

- A. Ms. Watai is a supervisor with the non-profit organization, Alu Like and works with youths that are at-risk in the native Hawaiian community. She is also involved with other community organizations working with crime prevention and feeding the hungry. Ms. Watai is a valuable asset to the Board and has expressed a willingness to serve as a member of the Kona Eviction Board for a two-year term.

### III. RECOMMENDATION

That Ms. Watai be reappointed to the Kona Eviction Board for an additional Two-Year term expiring on May 31, 2015.

Attachments:

- A. List of Eviction Board Members and Term Appointments
- B. Resume for Ms. Elaine Watai

Prepared by: Renee Blondin-Nip, Hearings Officer en

Approved by the Board of Directors  
on the date set forth above

---

David Gierlach, Chairperson

# Attachment A

## EVICTIION BOARD MEMBERS HAWAII PUBLIC HOUSING AUTHORITY Initial Appointment/Current Expiration Dates

Board Member	Initial Appointment Date	Current Expiration Date	Years Served as of December 2012
<b>Oahu A:</b>			
Douglas Kaya	03/17/05	03/31/15	7
Radiant Chase	01/25/02	07/31/13	10
Stanley Young	07/15/10	07/15/14	2
Jane Moana Gray*	06/21/07	06/30/13	5
<b>Oahu B:</b>			
Jane Moana Gray*	08/31/79	07/31/13	33
Earl Mente	12/19/97	07/31/13	15
Joyce Nakamura	02/20/98	07/31/13	14
<b>Oahu C:</b>			
Solomon Kuresa*	05/16/97	07/31/13	15
Sylvianne Young	12/19/97	07/31/13	15
Wayne Fujikane	05/10/05	07/31/13	7
Sylvia Wilmeth	11/18/10	11/31/14	3
Courtney Young	12/20/12	12/20/14	New Member
<b>Hilo:</b>			
Jane Moana Gray**	06/21/07	06/30/13	5
James DeMello	01/22/98	07/31/13	14
Eleanor Garcia*	07/17/03	07/31/13	9
George DeMello*	09/20/07	07/31/13	5
Melvin Kawahara	01/15/09	01/31/15	3
Keith Biho	02/18/10	02/28/14	2
<b>Kauai:</b>			
Jane Moana Gray**	06/21/07	06/30/13	5
Gary Mackler	12/17/98	08/31/13	14
Ludvina Takahashi	06/14/01	08/31/13	11
Arde Long-Yamashita*	02/31/08	02/31/14	4
<b>Kona:</b>			
Jane Moana Gray**	06/21/07	06/30/13	5
Ross Oue	05/15/92	07/31/13	20
Arleila Andrade	09/15/10	09/31/14	2
Elaine Watai	05/09/11	05/31/13	1
Eleanor Sheridan*	08/16/12	08/31/14	New Member
<b>Maui:</b>			
Jane Moana Gray**	06/21/07	06/30/13	5
Mark Nishino	01/19/95	08/31/13	17
Robert G. Hill	03/01/08	02/28/14	4

\* Resident Member

\*\* Floating Resident Member (Attends hearing when quorum needed)

Revised 03/14/13

## FOR ACTION

**MOTION:** To Amend the January 17, 2013 Regular Meeting Minutes Previously Approved by the Board of Directors of the Hawaii Public Housing Authority

### I. FACTS

- A. The regular meeting minutes of January 17, 2013 were previously adopted by the HPHA Board of Directors.
- B. A review of the audio tape of the meeting by the Department of the Attorney General revealed that the meeting minutes did not accurately capture the discussion related to preferences during the January 17, 2013 meeting. Audio tape review confirms that Executive Director Ouansafi did not state that "currently all new vouchers go the preference list" nor did he state that "the changes will allow a percentage of the vouchers for the preference list and a percentage of the vouchers for the regular wait list".

### II. DISCUSSION

- A. Based on the review of the audio tape, the minutes should be revised as follows:

"Director Shimizu asked if the HPHA is planning to eliminate the preferences for Section 8. Executive Director Ouansafi responded that we would like to remove the preferences as previously discussed. He further stated that all new placements into units are from the preference list. There are hard working families with no preference who have been on the waitlist for years. The change is to allow a percentage of units for the preference list and a percentage of the units for the regular waitlist for fairness to all applicants. Executive Director Ouansafi explained that when units that become available are going to preference this encourages a lot of people unfortunately due to economic situation to actually become homeless and to jump the line.

Chair Gierlach commented that he thought the Board had previously approved the proposed change.

### **III. RECOMMENDATION**

That Board of Directors approve the above listed amendment to the January 17, 2013 Regular Meeting Minutes previously approved by the Board of Directors of the Hawaii Public Housing Authority

Attachments:

- A. Proposed amended meeting minutes from the January 17, 2013 Regular Meeting
- B. Page 69U from the January 17, 2013 Board Packet, Annual PHA Plan

Approved by the Board of Directors  
on the date set forth above

---

David Gierlach, Chairperson



HAWAII PUBLIC HOUSING AUTHORITY  
MINUTES OF THE REGULAR MEETING  
HELD AT 1002 NORTH SCHOOL STREET, BUILDING E  
HONOLULU, HAWAII 96817  
ON THURSDAY, JANUARY 17, 2013  
IN THE COUNTY OF HONOLULU, STATE OF HAWAII

The Board of Directors of the Hawaii Public Housing Authority met for their Regular Board Meeting at 1002 North School Street, on Thursday, January 17, 2013 at 9:05 a.m.

The meeting was called to order by Chairperson Gierlach and upon the call to order, those present were as follows:

**DIRECTORS**

**PRESENT:**

Director David Gierlach, Chairperson  
Director Jason Espero, Secretary  
Director Roger Godfrey  
Director Debbie Shimizu  
Director Trevor Tokishi  
Designee Wilfredo Tungol  
Director George Yokoyama

Deputy Attorney General, John Wong  
Deputy Attorney General, Jennifer Sugita

**DIRECTORS**

**EXCUSED:**

Director Matilda Yoshioka, Vice-Chair  
Director Desiree Kihano

**STAFF PRESENT:**

Hakim Ouansafi, Executive Director  
Barbara Arashiro, Executive Assistant  
Clarence Allen, Acting Chief Financial Management Advisor  
Kiriko Oishi, Compliance Officer  
Rick Sogawa, Procurement Officer  
Becky Choi, State Housing Development Administrator  
Stephanie Fo, Section 8 Subsidy Program Branch Chief  
Joanna Renken, Public Housing Supervisor  
Rochelle Akamine, Resident Services Program Specialist  
Benjamin Park, Planner  
Gail Lee, Asset Management Project 31, Property Manager  
Taryn Chikamori, Secretary to the Board

**OTHERS:**

Greg Carroll, Michaels Development Company  
Douglas Chin, Carlsmith Ball, LLP

Augafa Ene, Mayor Wright Homes Resident  
Fetu Kolio, Private Resident  
Makani Maeva, Vitus Group  
Monika Mordasini, Michaels Development Company  
Matt Taufetee, Peacemakers  
Shane Kau, Peacemakers

**Proceedings:**

Chairperson Gierlach declared a quorum present.

**Director Espero moved,**

**To approve the Regular Meeting Minutes of December 20, 2012.**

Director Tokishi asked that on page 3 “Director Tokishi confirmed that the auditors did not see any indication of fraud or misuse of funds. The auditors test a larger than normal sample of cash disbursements until they have a level of comfort to issue the unqualified opinion” be changed to “Director Tokishi clarified that an unqualified opinion means that the financial statements are fairly presented. An unqualified opinion has nothing to do with fraud.

The minutes were unanimously approved as amended.

**Public Testimony**

Ms. Monika Mordasini, Michaels Development Company, stated that she is available for questions on the “For Action” item regarding the Choice Neighborhoods Initiatives (CNI) grant agreement. She also reported that at the end of last year both towers at Kuhio Park had been renovated and re-occupied. She stated that the Towers of Kuhio Park has 58 affordable units (without subsidy) that were in high demand and were leased as soon as the units became available.

Mr. Fetu Kolio, private resident, stated that he feels tenants are being intimidated or manipulated into signing move out agreements. He claimed that many times tenants do not understand what they are signing because of the language barrier. He also stated that he was told 19 hour tenant aides were not allowed to work at the property they live at, but Mayor Wright Homes (MWH) has 19 hour aides who live at MWH. He stated that he notices that the eviction Board is comprised of people from the community and feels that there should be a tenant representative.

**For Action:**

**Director Espero moved,**

**To Reappoint Mr. Melvin Kawahara to the HPHA’s Hilo Eviction Board and Mr. Douglas Kaya to the HPHA’s Oahu Eviction Board for a Two-Year Term Expiring on January 31, 2014 and March 31, 2014 Respectively.**

Executive Director Ouansafi stated that the candidates are fair, hard workers and with integrity, and that staff are recommending their appointment to the HPHA's eviction boards.

The motion was unanimously carried.

**For Action:**

**Director Espero moved,**

**To Authorize the Executive Director to Execute the Choice Neighborhoods Initiatives (CNI) Planning Grant Agreement with the U.S. Department of Housing and Urban Development (HUD) and Any and All Future Documents Related to the CNI Planning Grant.**

Executive Director Ouansafi reported that the Hawaii Public Housing Authority (HPHA) is applied for planning grant with Michaels Development Company (MDC). MDC was the lead applicant and HPHA is considered a co-applicant. The grant funds will be used to develop a transformation plan for the redevelopment of the Kuhio Park Terrace (KPT) community.

The motion was unanimously carried.

**For Action:**

**Director Espero moved,**

**To Approve the Timeline for the Hawaii Public Housing Authority's Five Year and Annual Plan; To Authorize the Executive Director to Hold Public Hearings on the Draft PHA Annual Plan for Fiscal Year 2013 – 2014 and Draft Amendments to the PHA 5-Year and Annual Plan for Fiscal Years 2009 – 2014; and To Authorize the Executive Director to Submit the Plan to the U.S. Department of Housing and Urban Development (HUD).**

Kiriko Oishi, Compliance Officer, stated that the HPHA will not be making any changes to the 5-year plan. The annual plan will include the following proposed changes and activities for the coming fiscal year:

- 1) Adopting policies and implementing a non-smoking policy for public housing;
- 2) Changes to the Section 8 Administrative Plan;
- 3) Amending the HPHA's VAWA policy to comply with recent clarifications from HUD;
- 4) Continued modernization and redevelopment of public housing;
- 5) Reviewing proposed changes to Asset Management Project groupings;
- 6) Start working on long range planning 5-yr plan;
- 7) Planning to make changes to the Hawaii Administrative Rules;
- 8) Changes in the HPHA's with eviction procedures to comply with State law;

- 9) Changes in the policies that affect the HPHA's PHAS scoring;
- 10) Planning for capital improvements are updated; and
- 11) Mixed finance redevelopment at Mayor Wright Homes.

Executive Director Ouansafi stated that the list of proposed activities is consistent with Board discussions and recent legislation that has passed.

Director Tokishi asked how the Board will be able to monitor the goals and objectives. He suggested using a dash board to track the HPHA's progress of significant or important goals for HPHA. Executive Director Ouansafi concurred that the staff will put something together for the report to the Board.

Director Yokoyama asked if the form of the PHA Plan is a template. He felt that the objectives needed to be measureable and within a timeframe. Executive Assistant Arashiro responded that the proposed changes to be made to the annual plan and the goals and objectives are listed in the 5-year plan on page 69B, section 5.2.

Director Shimizu asked if the HPHA is planning to eliminate the preferences for Section 8. Executive Director Ouansafi responded that ~~the preferences will not be eliminated~~ that we would like to remove the preferences as previously discussed. He further stated that all new placements into units are from the preference list.. Currently, all new vouchers go to the preference list. There are hard working families with no preference who has been on the waitlist for years. The change is to allow a percentage of the ~~vouchers~~ units for the preference list and a percentage of the ~~vouchers~~ units for the regular waitlist for fairness to all applicants. Executive Director Ouansafi explained that when units that become available are going to preference this encourages a lot of people unfortunately due to economic situation to actually become homeless and to jump the line.

Chair Gierlach commented that he thought the Board had previously approved the proposed change.

The motion was unanimously carried.

#### **Executive Director's Report:**

Executive Director Ouansafi introduced the new Planner, Benjamin Park. He stated Mr. Park was the office manager for former House Majority Leaders Pono Chong and Representative Blake Oshiro.

Executive Director Ouansafi thanked Ms. Yvonne Tanaka of DHS for helping the HPHA hire Mr. Park expeditiously.

Executive Director Ouansafi stated that he has been with the agency for a year now and would like to thank the staff for all their hard work. He reported that the HPHA moved in 136% more new families than the previous year; reduced the vacant unit by 17%; the occupancy rate is

approximately 93%; provided approximately \$2.3 million more of Section 8 housing assistance; cut the administrative cost down by over a million dollars; and cut the general expensed by about \$3.5 million.

Executive Director Ouansafi reported the HPHA will be drafting a letter to tenants regarding the implementation of the non-smoking policy. The tenants will be given two months to get used to complying with the policy, then they will be required to sign an amended lease. The HPHA has been working with the Department of Health (DOH) and the Coalition for a Tobacco Free Hawaii as well as other agencies. For tenants who want to quit smoking, the HPHA will work with the DOH and the Coalition for a Tobacco Free Hawaii to provide patches and other cessation programs when available.

Executive Director Ouansafi stated that the HPHA will be working with each community to determine if a designated smoking area is wanted by tenants or complete no smoking properties.

Director Tokishi asked what the penalty is if a tenant gets caught smoking in their unit. Executive Director Ouansafi responded that it will be a lease violation.

Director Tokishi asked if the HPHA needs to catch the tenant smoking or just smell the smoke. He commented that it could be difficult to catch someone smoking in their unit. Executive Director Ouansafi agreed that the policy may be difficult to enforce, but the HPHA hopes that as time goes on the community will see the benefits of non-smoking.

Designee Tungol asked if the no-smoking policy would apply to guests. Executive Director confirmed that the policy would apply to a tenant's guests and the lease states that tenants are responsible for their guests.

Designee Tungol suggested that the HPHA put up no smoking signs. Executive Director Ouansafi reported that the HPHA will be putting up signs and the DOH has agreed to provide some signs at no cost to the HPHA.

Director Gierlach asked if the HPHA received the HUD approval on the waiver of conflict of interest. Executive Assistant Arashiro responded that the HPHA recently received approval of the Board's request for a waiver of the conflict of interest.

Executive Director Ouansafi reported that the list of Legislative proposals is on page 97.

Director Shimizu stated that the Governor's office and the HPHA are still in discussions regarding the exemption from chapter 26-35 (a)(1), (5), (6) which exempts the authority from having to go through the DHS and the Governor's office in terms of communication, procurement and allocation of space.

Director Shimizu stated the problem is that other Board's are not exempt.

Chairperson Gierlach asked if the HPHA is different from other Board's because the HPHA is majority federally funded. Director Shimizu responded that the HPHA still receives some State funds.

Executive Director Ouansafi stated that the HPHA is different because HUD mandates that the Board must be govern as a separate entity. He feels the HPHA is a full service agency and different than other attached agencies and the Board should be in charge of the final say. He stated that if the Board makes a decision, the decision should not be over ruled by any other individual.

Executive Director Ouansafi recommended that the Board go into Executive Session to further discuss the matter.

Chairperson Gierlach deferred the issue till Executive Session.

Executive Director Ouansafi asked that the Board create a Finance Task Force to review the single audit findings.

Chairperson Gierlach stated the Finance task force will consist of Directors Tokishi, Espero, Godfrey, Shimizu and himself for the purpose of meeting with the staff to review the single audit findings and the HPHA's draft responses.

Executive Director Ouansafi reported that the HPHA requested \$180 million from the State, but the administration requested \$90 million for 2013 and nothing at this time for 2014.

Executive Director Ouansafi reported that the HPHA currently is on track to spend all of the funds, once Budget and Finance (B & F) releases the funds. Currently, there are multiple requests for the release of funds that have been in the review process at B&F for several months.

Director Tokishi asked for clarification on page 109, Revenues: Capital Improvement Projects (CIP) Administrative drawdown budgeted beginning in November (\$456k monthly through July 2013) awaiting current CIP allotment for revenue recognition. Executive Director Ouansafi responded that the HPHA expects to receive administrative fees for some of the CIP.

**Director Tokishi moved at 10:45 a.m.,**

**Motion: To go into Executive Session pursuant to Hawaii Revised Statutes sections 92-4 and 92-5(a)(4) to consult with the Board's attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as related to:**

- 1. Kolio, et al v. State of Hawaii, Hawaii Public Housing Authority Denise Wise in Her Official Capacity As Executive Director (Civil Case No. CV11-00266 and Civil No. 11-1-0795); and**
- 2. Deferred Item on 2013 Legislative Proposals Submitted to the Office of the Governor**

The motion was unanimously carried.

**The Board reconvened from Executive Session at 11:03 a.m.**

Chairperson Gierlach stated that the Board discussed the Kolio litigation and the legislative proposal related to HPHA's autonomy.

**For Information:**

**U.S. Department of Housing and Urban Development (HUD) Recovery Plan, Hawaii  
Public Housing Authority**

Executive Director Ouansafi stated that for the fiscal year ending June 30, 2011 the HPHA was rated "Substandard Management" by HUD. The HPHA and HUD executed a recovery plan. There are still some training for staff that needs to occur.

Executive Director Ouansafi stated he would like to add one more activity to the annual plan. The HPHA will be asking for no residual rights, which means that if the head of household moves out the adult child may not continue occupying the unit. The adult must go through the application process.

Chairperson Gierlach asked if the addition needs Board approval. Executive Director Ouansafi responded, no because this is a draft and the final will be brought to the Board in March.

With no further business for the Board to conduct, the meeting adjourned at 11:05 a.m.

**MINUTES CERTIFICATION**

Minutes Prepared by:

\_\_\_\_\_  
Taryn T. Chikamori  
Secretary to the Board

\_\_\_\_\_  
Date

Amended and Approved by the Hawaii Public Housing Authority Board of Directors at their Regular Meeting on April 18, 2013: [ ] As Presented [ ] As Amended on 4/18/13

\_\_\_\_\_  
Jason Espero  
Director/Board Secretary

\_\_\_\_\_  
Date



Hawaii Public Housing Authority  
Annual Plan  
Fiscal Year 2014

Attachment B  
Page 1

Public Housing Authority (PHA) 5-Year and Annual Plan		U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB No. 2577-0226 Expires 4/30/2011
1.0	<b>PHA Information</b> PHA Name: Hawaii Public Housing Authority PHA Type: <input type="checkbox"/> Small <input type="checkbox"/> High Performing <input checked="" type="checkbox"/> Standard <input type="checkbox"/> HCV (Section 8) PHA Fiscal Year Beginning: 07/01/2013 PHA Code: HI001		
2.0	<b>Inventory (based on ACC units at time of FY beginning in 1.0 above)</b> Number of PH units: 5,331 Number of HCV units: 3058 total authorized (2,050 funded)		
3.0	<b>Submission Type</b> <input type="checkbox"/> 5-Year and Annual Plan <input checked="" type="checkbox"/> Annual Plan Only <input type="checkbox"/> 5-Year Plan Only		
4.0	<b>PHA Consortia</b> <input type="checkbox"/> PHA Consortia: (Check box if submitting a joint Plan and complete table below.)		
5.0	Items 5.1 and 5.2 are completed only at the 5-Year Plan update; this is an Annual Plan only. The existing 5-Year PHA Plan may be viewed on the internet at <a href="http://www.hpha.hawaii.gov/housingplans/2009PHAPlan/index.htm">http://www.hpha.hawaii.gov/housingplans/2009PHAPlan/index.htm</a> or in person at the Hawaii Public Housing Authority office at 1002 N. School St, Building E, Honolulu, HI, 96817.		
6.0 (a)	<b>PHA Plan Update</b>  The following items are additions and changes to the PHA Plan:  <ol style="list-style-type: none"><li>1. <b>Controlled Substances Policies:</b> The HPHA adopted proposed Hawaii Administrative Rule (HAR) revisions to prohibit smoking in public housing. After final adoption of these amendments, the HPHA will provide tenants with revised leases or lease addenda outlining enforcement strategies for the new smoking prohibition.</li><li>2. <b>Housing Choice Voucher Administrative Plan:</b> The HPHA is amending the Section 8 Administrative Plan to eliminate current preferences from eligibility screening. The HPHA will select applicants off the waitlist in the order of date and time of application.</li><li>3. <b>Violence Against Women Act (VAWA) Policy:</b> The HPHA is adopting a final VAWA Policy, which will replace the interim policy that has been in place. See VAWA Activities policy (separate document).</li><li>4. <b>In order to facilitate the improvement, modernization, development, or maintenance of public housing,</b> the HPHA may incorporate an affiliate entity or instrumentality entity, as prescribed by relevant Federal regulations and state law.</li><li>5. <b>Asset Management:</b> In order to improve daily property management and maintenance operations, the HPHA may create additional asset management projects, or developments.</li><li>6. <b>Long Range Planning:</b> The HPHA will begin the development of the PHA 5-Year and Annual Plan for Fiscal Years 2014-2019. The HPHA Staff will investigate, review, and update other U.S. Department of Housing &amp; Urban Development-required or -recommended long and short range planning documents.</li><li>7. <b>HAR Revisions:</b> The Board adopted revisions to 17-2020, HAR, and 17-2028, HAR, at its September monthly meeting which will result in future lease and ACOP changes. Interested parties are encouraged to check the HPHA's website for public hearing announcements and testimony submission options regarding</li></ol>		

069u



## FOR ACTION

**MOTION:** To Adopt Amendments to and Compilation of Chapter 17-2028 "Federally-Assisted Housing Projects", Hawaii Administrative Rules, and to Authorize the Executive Director to Undertake All Actions Necessary under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01 to Implement the Amendments

### I. FACTS

- A. The Hawaii Public Housing Authority (HPHA) Federal Low Income Public Housing (LIPH) inventory is governed by a variety of federal, state, and agency statutes and rules, such as the Code of Federal Regulations and Chapter 356D, Hawaii Revised Statutes (HRS).
- B. Sections 356D-4 and 356D-13 (Attachment A) authorize the HPHA to adopt administrative rules with the force and effect of law to govern its federal programs.
- C. The HPHA has consistently managed the federal LIPH inventory in accordance with Chapter 17-2028 "Federally-Assisted Housing Projects", Hawaii Administrative Rules (HAR).
- D. In order to implement a number of changes to policies, procedures, and initiatives to improve service delivery and program administration, amendments to Chapter 17-2028, HAR, were developed for adoption and compilation in September 2012, subject to review and approval by the Department of the Attorney General.
- E. Upon review of the amendments to Chapter 17-2028, HAR, the Department of the Attorney General recommended further revisions to Chapter 17-2028, HAR, for clarification, consistency, and to realize the objectives of the policy changes meant to improve service delivery and program administration.
- F. Once approved by the HPHA Board of Directors, the agency must requires permission to take the proposed Rule to public hearing from the Governor. The HPHA staff must give thirty days' notice to the public and hold hearings on the Islands of Kauai, Oahu, Maui, and Hawaii.

- G. Once the hearing process has been completed, the HPHA must request the Governor to adopt the Rule and file certified copies with the Office of the Lieutenant Governor.

## II. DISCUSSION

- A. Section 17-2028-2, HAR: The proposed amendments to Chapter 17-2028, HAR, would add new definitions to the Rule for the terms "common areas," "criminal activity," "enclosed or partially enclosed," and "household," and amend the definitions for "backcharge," "extremely low income family," "family," "live-in aide," "low income family," "very low income family," and "violent criminal activity," for clarity or consistency with definitions used in the Code of Federal Regulations.
- B. Section 17-2028-4, HAR: The proposed amendments would conform the valuation method for determining a tenant's assets to the applicable Code of Federal Regulations.
- C. Section 17-2028-6, HAR: The proposed amendments would remove the exhibit on the occupancy standards, which follow the housing codes of each of the counties in which the units are located.
- D. Section 17-2028-7, HAR: The proposed amendments would make further revisions to the provisions governing utility allowances, remove the exhibit on the schedule of utility allowances, and provide that the schedule would be developed annually based on the listed factors.
- E. Section 17-2028-22(a), HAR: The proposed amendments would require for eligibility no history of criminal activity that adversely affects the health, safety, or right to peaceful enjoyment of the premises by other tenants, authority, or staff, for the past three years. The rule currently only requires that applicants not have a history of drug-related or violent criminal activity.
- F. Section 17-2028-22(b), HAR: The proposed amendments would allow the HPHA to prohibit applications based on prior rental history.
- G. Section 17-2028-24, HAR: The proposed amendments would revise the timeframes for requesting and scheduling informal hearings for ineligibility determinations by using calendar instead of working days.
- H. Section 17-2028-52, HAR: The proposed amendments would clarify the need for HPHA approval to include additional family members into the household.

- I. Sections 17-2028-54 and 17-2028-59, HAR: The proposed amendments would provide for lease termination for noncompliance with the community service requirements in accordance with the applicable Code of Federal Regulations.
- J. Section 17-2028-56, HAR: The proposed amendments would clarify that the requirement for a tenant who has obtained an interim rent decrease adjustment to report income increases allows tenants ten business days from the date they became aware of the increase to report the change, and provide that no rent adjustment would be processed if the HPHA confirms the decrease in income will last less than 30 calendar days.
- K. Section 17-2028-57, HAR: The proposed amendments would clarify the provision on tenant transfers by allowing transfers for reasonable accommodation purposes, and clarify the circumstances under which a tenant would not be transferred due to the initiation of eviction proceedings.
- L. Section 17-2028-59, HAR: The proposed amendments would add to the grounds for termination of a rental agreement, failure to maintain utility services, wilful damage to HPHA property, felony convictions, and fugitive felons and parole violators for consistency with the HUD policy of keeping public housing a safe environment for its tenants and maintaining program integrity.
- M. Section 17-2028-59(b)(7), HAR: The proposed amendments would clarify the provisions for termination of a rental agreement for failure to abide by the smoking prohibition by providing that the rental agreement would be terminated upon violation on more than three occasions, and providing an incentive for participating in a smoking cessation program.
- N. Section 17-2028-61, HAR: The proposed amendments would provide for a reasonable payment arrangement to a family whose exemption from the minimum rent is determined to be temporary, in conformance with applicable Code of Federal Regulations provisions.
- O. Section 17-2028-62, HAR: The proposed amendments would limit the income-based rent pursuant to the applicable Code of Federal Regulations provisions.
- P. The proposed amendments in Attachment B that are in bold and highlighted reflect only the new changes currently being proposed. Changes that are not emphasized were approved by the Board of Directors in September 2012 or are nonsubstantive amendments.

- Q. The proposed amendments in the form attached as Attachment B have been reviewed and approved by the Department of the Attorney General.
- R. Following approval from the Governor to hold public hearings on the proposed amendments, the Executive Director will hold public hearings on the Islands of Kauai, Oahu, Maui, and Hawaii at a date and locations to be determined.
- S. Based on testimony received during the public viewing and comment period, the Executive Director will make any non-substantive amendments to the draft amendments to and compilation of the Rule prior to or following the public hearing.
- T. After the public hearings, the Executive Director will transmit amendments to and compilation of Chapter 17-2028, HAR, to the Governor for final approval provided that no substantive amendments are made. Staff anticipates the following updated approximate schedule of the process:

<u>Action</u>	<u>Timeframe</u>
Board For Action (adopt amendments)	April 18, 2013
Request to Governor for public hearing	April 19, 2013
Receive Governor authorization	May 13, 2013
Publish hearing notice (30 day notice)	May 14, 2013
Public Hearing	June 13, 2013
Finalize Rule/Transmit to Governor for Adoption	June 17, 2013
Rule effective	July 1, 2013

### III. RECOMMENDATION

That the HPHA Board of Directors Adopt Amendments to and Compilation of Chapter 17-2028, "Federally-Assisted Housing Projects", Hawaii Administrative Rules, and Authorize the Executive Director to Undertake All Actions Necessary Under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01 to Implement the Rules

Attachment A: Sections 356D-4, and 356D-13, Hawaii Revised Statutes

Attachment B: Draft changes to Chapter 17-2028, Hawaii Administrative Rules  
(Ramseyer format)

Prepared by: Kiriko Oishi, Chief Compliance Officer ko

Approved by the Board of Directors  
on the date set forth above

---

David Gierlach  
Chairperson

## **Attachment A**

**The Hawaii Public Housing Authority's authorizing statutes allow the HPHA to adopt administrative rules with the force and effect of law to govern its federal programs.**

**[§356D-4] General powers of the authority.** (a) The authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and

(4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs.

(b) In addition to other powers conferred upon it, the authority may do all things necessary and convenient to carry out the powers expressly provided in this chapter. [L 2006, c 180, pt of §2]

**[§356D-13] Administration of federal programs.** (a) The authority may carry out federal programs designated to be carried out by a public housing agency, or entity designated by the authority.

(b) The authority shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the authority and may be used to cover the administrative expenses of the authority. [L 2006, c 180, pt of §2]

Attachment B

**THIS REFLECTS THE DRAFT REVISIONS TO THE RULES  
APPROVED BY THE BOARD IN SEPTEMBER 2012 AND FEBRUARY  
2013 AND INCLUDES THE NEW PROPOSED AMENDMENTS TO THE  
RULES. NEW PROPOSED AMENDMENTS ARE INDICATED IN BOLD  
AND HIGHLIGHTED.**

Rules Amending Title 17  
Hawaii Administrative Rules

April 18, 2013

1. Chapter 2028 of Title 17, Hawaii  
Administrative Rules, entitled "Federally-Assisted  
Public Housing Projects" is amended and compiled to  
read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HAWAII PUBLIC HOUSING AUTHORITY

CHAPTER 2028

FEDERALLY-ASSISTED PUBLIC HOUSING PROJECTS

Subchapter 1 General Provisions

§17-2028-1	Purpose
§17-2028-2	Definitions
§17-2028-3	Income limits
§17-2028-4	Asset transfers
§17-2028-5	Occupancy guidelines
§17-2028-6	Occupancy standards
§17-2028-7	Utility allowance
§17-2028-8	Verification of information

§17-2028-9 Misrepresentation

#### Subchapter 2 Eligibility

§17-2028-21 Applicants  
§17-2028-22 Eligibility for admission and participation  
§17-2028-23 Notification of eligibility  
§17-2028-24 Informal hearing for applicants determined to be ineligible for admission

#### Subchapter 3 Tenant Selection

§17-2028-31 Nondiscrimination  
§17-2028-32 Income targeting  
§17-2028-33 Deconcentration  
§17-2028-34 Local preferences  
§17-2028-35 Loss of preference  
§17-2028-36 Waiting list  
§17-2028-37 Removal from waiting list  
§17-2028-38 Closing the waiting list  
§17-2028-39 Offers  
§17-2028-40 Occupancy of accessible dwelling units

#### Subchapter 4 Occupancy and Rental Agreement

§17-2028-51 Rental agreement  
§17-2028-52 Eligibility for continued occupancy  
§17-2028-53 Reexamination  
§17-2028-54 Reexamination results  
§17-2028-55 Special reexamination  
§17-2028-56 Interim rent adjustment  
§17-2028-57 Tenant transfers  
§17-2028-58 Backcharges  
§17-2028-59 Rental agreement termination  
§17-2028-60 Smoking prohibited



Subchapter 5 Rents [and], Security  
Deposits, and Other Charges

\$17-2028-61 Minimum rents  
\$17-2028-62 Choice of rent  
\$17-2028-63 Security deposits  
\$17-2028-64 Other Charges

Subchapter 6 Family Self-Sufficiency  
Program

\$17-2028-71 Family self-sufficiency program  
\$17-2028-72 Eligibility  
\$17-2028-73 Recruitment and outreach  
\$17-2028-74 Selection  
\$17-2028-75 Termination or withholding of service

Subchapter 7 Special Programs

\$17-2028-81 Special programs  
\$17-2028-82 Occupancy by police officers  
\$17-2028-83 Designated housing

Subchapter 8 Household Pets

\$17-2028-91 Pet ownership  
\$17-2028-92 Conditions of pet ownership

Subchapter 9 Miscellaneous Provisions

\$17-2028-101 Severability  
\$17-2028-102 Number and gender

Historical Note: Chapter 2028 of Title 17, Hawaii Administrative Rules, is substantially based upon Chapter 17-2028, Hawaii Administrative Rules, [Eff 7/21/05; am and comp 9/4/07; am and comp ], Chapter 17-535, Hawaii Administrative Rules, [Eff 1/1/81; am and comp 2/11/85; am and comp 5/26/98; R 12/03/01], and Chapter 15-190, Hawaii Administrative Rules [Eff 12/03/01; R 9/04/07]

## SUBCHAPTER 1

### GENERAL PROVISIONS

\*\*\*\*

§17-2028-2 Definitions. [As used in these rules, except as otherwise required by context:]  
Whenever used in this chapter, unless specifically defined:

\*\*\*\*

**"Backcharge" means the amount of arrears in rent or other charges owed to the authority.**

\*\*\*\*

**"Common areas" means areas which are available for use by more than one family including lobbies, corridors, hallways, stairways, parking lots, spots, ramps, washing machine or laundry room, rooftops, elevators, washrooms and lobby areas, driveways, storerooms, and shared ventilation ducts that service more than one dwelling unit.**

\*\*\*\*

"Criminal activity" means the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in any conduct constituting a criminal violation of federal law, HRS, or local ordinances regardless of whether there has been an arrest or conviction for such activity and without satisfying the standard of proof used for a criminal conviction.

\*\*\*\*

"Enclosed or partially enclosed" means closed in by a roof or overhang and at least one wall. Enclosed or partially enclosed areas include but are not limited to areas commonly described as public lobbies, lanais, interior courtyards, patios, and covered walkways.

\*\*\*\*

"Extremely low-income family" means a family whose annual income does not exceed thirty per cent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty per cent of the median income for the area [may be established] if HUD finds that such variations are necessary because of unusually high or low family incomes.

"Family" means[:] regardless of actual or perceived sexual orientation, gender identity, or marital status:

- (1) Two or more persons who live or intend to live together as a unit and whose income and resources are available to meet the family's needs and who may be related by blood, marriage, or operation of law and whose head of family has reached the age of majority. Family may include foster children and hanai children;
- (2) An elderly family;
- (3) A disabled family;

- (4) A displaced family;
- (5) The remaining member of a tenant family who is recorded as an authorized occupant on the current list of household members and who has reached the age of majority; or
- (6) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

\*\*\*\*

"Household" means the family and a live-in aide approved by the authority.

\*\*\*\*

"Live-in aide" means a person who resides with one or more elderly persons, or near elderly persons, or persons with disabilities, and who:

- (1) Is determined to be essential to the care and well-being of the persons;
- (2) Is not obligated for the support of the persons; [and]
- (3) Would not be living in the unit except to provide the necessary support services[.];  
and
- (4) Is not a tenant.

\*\*\*\*

"Low-income family" means a family whose annual income does not exceed eighty per cent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty per cent of the median income for the area [may be established] if HUD finds that such variations are necessary because of unusually high or low family incomes.

\*\*\*\*

"Very low-income family" means a family whose annual income does not exceed fifty per cent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than fifty per cent of the median income for the area [may be established] if HUD finds that such variations are necessary because of unusually high or low family incomes.

\*\*\*\*

"Violent criminal activity" means any [illegal] criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force [against the person or property of another.] substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

[Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. Parts 5, 903, 960, 965, 966; HRS §§356D-4, 356D-13)

\*\*\*\*

§17-2028-4 Asset transfers. (a) All assets transferred or assigned from an applicant or tenant to another person, within a [twenty-four month] two year period prior to submitting an application for the program or reexamination shall be included in determining an applicant's assets.

(b) [The value of the assets shall be based on the fair market value.] In determining assets, the authority shall include the value of any business or assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or a bankruptcy sale) during the two years preceding the date of the application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a



separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms. [Eff

7/21/05; am and comp 9/4/07; comp  
] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R.  
\$5.603; HRS §§356D-4, 356D-13, 356D-31)

\*\*\*\*

§17-2028-6 Occupancy standards. [Applicant and tenant] The authority and families shall abide by the occupancy standards for the admission and continued occupancy in housing projects as prescribed by the [occupancy standards which are incorporated by reference and attached as exhibit G. The standards follow the occupancy] housing codes of the county in which the units are located. [Eff 7/21/05; am and comp 9/4/07; am and comp ]  
(Auth: HRS §§356D-4, 356D-13) (Imp: 63 Fed. Reg. 70982 - 70987; 63 Fed. Reg. 70256-70257; HRS §§356D-4, 356D-13, 356D-31).

§17-2028-7 Utility allowances. (a) The monthly rent for a [tenant] family residing in a federally-assisted public housing project shall include utility allowances established in accordance with HUD's standards for utility allowances[.] as described in 24 C.F.R. §965.505 as it existed on March 28, 2013.

(b) Utility allowances shall be calculated by determining the utility rate then multiplying it by the applicable quantity allowance. A schedule of applicable quantity allowances for lighting, electric domestic hot water heaters, miscellaneous electrical, gas domestic hot water heaters [is incorporated by reference and attached as exhibit H.] shall be developed annually and shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used;

- (2) The size of the dwelling units and the number of occupants per dwelling unit;
- (3) Type of construction and design of the housing project;
- (4) The energy efficiency of authority-supplied appliances and equipment;
- (5) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total tenant payment; and
- (6) Temperature of domestic hot water.

(c) The authority shall conduct a review of utility rates in January of each year[.] as required by 24 C.F.R. §965.507 as it existed on March 28, 2013. Electric and gas rate schedules for all providers shall be collected and reviewed for each month from the preceding January through December of the calendar year prior to the fiscal year beginning July 1. These monthly rates shall be averaged over the year period.

(d) The new utility allowances shall be posted and noticed to [residents] tenants at least sixty [(60)] days prior to the implementation date, during which time [residents] tenants shall have the opportunity to present written or oral comments. The applicable schedules shall be publicly posted in a conspicuous manner at the authority's project offices and shall be furnished upon request. The implementation date for new allowances shall be July 1.

(e) Implementation of all new allowances or components of allowances, by utility, shall be required when there is more than a ten per cent change in [rates.]the resulting allowance due to a rate change since the last change was effective. In cases when a utility is granted a substantial rate increase in between the annual review, a mid-year allowance adjustment may be required.

(f) The authority may update the quantity allowances. To update the quantity allowance, units of various sizes in a sampling of different types of developments shall be surveyed to determine the types of existing equipment as well as to identify any

factors affecting energy efficiency. If there is a variance in energy consumption factors [among] within housing projects, the worst case scenario shall be identified and utilized for calculating the quantity allowances. The authority may, at its option, develop property specific allowances for its properties.

- (1) Allowances for lighting shall be developed by conducting a field survey of [various] a representative sample of units to determine the number and type of fixtures. The following factors shall be used to determine the kilowatt hour per month allowance for each unit size:
  - (A) The number of fixtures;
  - (B) Watts per fixture; and
  - (C) [Hours] Estimated hours of use per day.
- (2) Allowances for miscellaneous electric equipment shall be based upon usage of a television, radio, miscellaneous small appliances, and a fan.
- (3) The allowance for refrigerators is based on [a new, but non-energy efficient model. For 0, 1, and 2 bedroom units a 14 cubic foot model utilizing 155 kilowatt hours per month is assumed. For a 3, 4 and 5 bedroom unit, a 16 cubic foot model utilizing 165 kilowatt hours per month is assumed.] the equipment in place at the time of survey.
- (4) Allowances for cooking shall be [930 kilowatt hours per year for 0, 1, and 2 bedroom units, and 1140 kilowatt hours per year for 3, 4, and 5 bedroom units, respectively.] based on the equipment in place at the time of survey.
- (5) Allowances for electric domestic hot water heating shall be based on engineering calculations for each bedroom size assuming a certain number of occupants. The data used in the calculations include estimated consumption per occupant per day, temperature of incoming water, temperature



of hot water supply, efficiency of heater, and energy required to heat water to supply temperature.

(6) Allowance for solar domestic hot water shall be based on a cost analysis of a domestic hot water heating system.

(7) Gas consumption allowances shall be developed using the same methodology as the electric consumption allowance.

(g) The authority shall provide medical disability allowances for [residents] tenants who have provided proof of medical necessity to the authority. The quantity allowances for medical equipment shall be [as follows:

(1) For window air conditioners, 229 kilowatt hours per month;

(2) For oxygen concentrators, 219 kilowatt hours per month;

(3) For nebulizers, 5 kilowatt hours per month;

(4) For electric hospital beds, 1 kilowatt hour per month;

(5) For alternating pressure pads, 51 kilowatt hours per month;

(6) For low air-loss mattresses, 88 kilowatt hours per month;

(7) For power wheelchairs or scooters, 33 kilowatt hours per month;

(8) For CPAP machines, 9 kilowatt hours per month; and

(9) For any other medical equipment, the quantity allowance shall be determined by taking the equipment's average energy consumption multiplied by the normal frequency of usage.]

determined by taking the equipment's average energy consumption multiplied by the normal frequency of usage.

(h) A [tenant] family shall pay for utility usage in excess of the applicable utility allowance.

(i) A [tenant] family shall receive a utility reimbursement when the utility allowance exceeds the

total [tenant] family payment [with the exception of tenants] except where:

- (1) The family is paying a flat rent[.];
- (2) The utility reimbursement would result in a rent due to the authority below the minimum rent as established in section 17-2028-61;  
or
- (3) The family has received a financial hardship exemption pursuant to section 17-2028-61(b) from the minimum rent payment and reimbursement would result in a balance due from the authority to the household.

(j) If a family resides in a dwelling unit served by authority-furnished utilities and must pay for utility usage in excess of the applicable utility allowance pursuant to subsection (h), where:

- (1) A checkmeter has been installed, the family must pay the excess unit cost of the relevant utility amount based on the authority's average utility rate as described in subsection (b).
- (2) A checkmeter has not been installed, the family must pay for excess usage resulting from estimated utility consumption attributable to tenant-owned major appliances or to optional functions of authority-furnished equipment according to the schedule described in subsection (b).  
[Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§5.603, 5.632, 960.253, Part 965 Subpart E, §966.4; HRS §§356D-4, 356D-13, 356D-31)

\*\*\*\*

## SUBCHAPTER 2

### ELIGIBILITY

\*\*\*\*

§17-2028-22 Eligibility for admission and participation. (a) To be eligible for participation in the program, applicant and household members shall meet all of the requirements of the pre-application and final[-] application phases as set forth below:

(1) During the pre-application phase, the applicant and adult household members shall:

- (A) Qualify as a family;
- (B) Be income eligible as determined under section 17-2028-3;
- (C) Not have an outstanding debt owed to the authority as a participant in any of its programs;
- (D) Not have an outstanding liability for unpaid rent or damages incurred while previously participating in any section 8 rental subsidy program;
- (E) Provide a social security number for all family members who are at least six years of age or certify that the person does not have a social security number;
- (F) Not have been evicted since March 1, 1985, from a public housing program administered by the authority or any of its [predecessor,] predecessors, the housing and community development corporation of Hawaii or Hawaii housing authority;
- (G) Not have been evicted from assisted housing by reason of drug-related criminal activity for a three-year period beginning on the date of the eviction unless the evicted tenant successfully completes a rehabilitation program approved by the authority;
- (H) Not have committed fraud, bribery, or any other corrupt or criminal act in connection with any federal or state housing program;
- (I) Not be [illegally using a controlled substance] currently engaging in

illegal use of a drug or give the authority [a] reasonable cause to believe that [the] a household member's illegal use (or pattern of illegal use) of a [controlled substance] drug or abuse [alcohol by a household member,] (or pattern of abuse) of alcohol may interfere with the health, safety, or right to peaceful enjoyment of [a rental] the premises by other [residents] tenants. For the purposes of this subsection:

(i) [For the purposes of this subsection, "reasonable cause to believe" means by a preponderance of the evidence;] "Currently engaged in" means the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current; and

(ii) [For the purposes of this subsection, in] In determining whether to deny eligibility based on a pattern of illegal use of a [controlled substance] drug or a pattern of abuse of alcohol by a household member, the authority may consider rehabilitation as provided for under 42 U.S.C. §13661(b)(2)(A)-(C) [effective October 1, 1999, which is incorporated by reference and attached as exhibit I;] as it existed on March 28, 2013.

(J) Not currently or during a three year period preceding the date when the applicant household would otherwise be selected for admission be engaged in any drug-related criminal activity or violent criminal activity or other criminal activity which would adversely

affect the health, safety, right to peaceful enjoyment of the premises by other [residents,] tenants, the [owner,] authority, or [authority employees,] staff;

- (K) Not have been convicted [in] of drug-related criminal activity for the manufacture, production, or distribution of methamphetamines; [and]
  - (L) Not subject to lifetime registration requirements under any [State] state sex offender's registration program[.];
  - (M) Not have a record of conduct or behavior within ten years of the projected date of admission which may be detrimental to the project, its tenants, or employees;
  - (N) Not be using marijuana, even if pursuant to a lawful prescription under part IX of the Hawaii uniform controlled substances act as it existed on March 28, 2013; and
  - (O) Disclose incidence of tobacco use of all family members within the household.
- (2) During the final application phase, the applicant and all adult household members shall meet the requirements as set forth in (1), above, as well as the following requirements:
- (A) Not [engaged] engage in or [threatened] threaten abusive or violent behavior toward the authority's [personnel.] staff. For purposes of this subsection, ["threatened"] "threaten" means an oral or written threat or physical gestures that communicate intent to abuse or commit violence. Abusive or violent behavior may be verbal or physical and include use of expletives that are generally

considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate; and

- (B) Furnish evidence of citizenship or eligible immigrant status as provided for in 24 C.F.R. §5.508[, which is incorporated by reference and attached as exhibit J.] as it existed on March 28, 2013.

**(b) An applicant's past performance in meeting financial obligations, especially rent, shall be considered by the authority in its selection of families for admission into its federally-assisted public housing program.**

(c) An applicant who is continuously assisted under the [U.S.] United States Housing Act of 1937 Housing Act, as amended, shall be admitted to the program as though the applicant was already a program participant. [Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §§356D-4, 356D-13) (Imp: 42 U.S.C. §13661; 24 C.F.R. §§5.216, 960.202, 960.203, 960.204, 960.205; HRS §§356D-4, 356D-13, 356D-31)

\*\*\*\*

**§17-2028-24 Informal hearing for applicants determined to be ineligible for admission.** (a) An applicant determined to be ineligible for admission or participation in the program may request an informal hearing by submitting a written request within **fourteen [working] calendar days** from the date of notification of ineligibility.

(b) The informal hearing shall be scheduled within **twenty-one [working] calendar days** from the date the written request is received and shall be conducted by any person or persons designated by the authority, but shall not be a person who made or

approved the determination of ineligibility or a subordinate of [this] such person.

(c) The applicant shall be given the opportunity to present evidence, which shall be considered by the hearing officer, along with the data compiled by the authority.

(d) A written notice of the hearing officer's decision shall be mailed to the applicant within **twenty-one [working] calendar days** after the hearing. The notice shall include an explanation of the reasons for decision. [Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §960.208; HRS §§356D-4, 356D-13, 356D-31)

\*\*\*\*

#### SUBCHAPTER 4

#### OCCUPANCY AND RENTAL AGREEMENT

\*\*\*\*

##### §17-2028-52 Eligibility for continued occupancy.

(a) To be eligible for continued occupancy in a housing project, the tenant shall:

- (1) Qualify as a family;
- (2) Conform to the occupancy standards;
- (3) Abide by smoking prohibitions pursuant to section 17-2028-60;
- (4) Not have a record of conduct or behavior which may be detrimental to the project, its tenants or employees[;] of the authority; and
- (5) Except for an exempt individual, conform to the following community service and economic self-sufficiency requirements:
  - (A) Contribute eight hours per month of community service (not including political activities);



- (B) Participate in an economic self-sufficiency program for eight hours per month; or
- (C) Perform eight hours per month of combined activities as described in paragraphs (A) and (B), above.

(b) Except for a newborn child, a person shall not be permitted to join or rejoin the family until the authority verifies that the person meets the eligibility requirements set forth in section 17-2028-22[.], and approves of the family's request to add a family member as an occupant of the unit.

[Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §§356D-4, 356D-13) (Imp: C.F.R. §§960.603, 966.4; HRS §§356D-4, 356D-13, 356D-31)

\*\*\*\*

§17-2028-54 Reexamination results. (a) A [tenant] family shall be given written notification within a reasonable time, after determination by the staff, of both the [tenant's] family's eligibility for continued occupancy and rent schedule.

(b) A [tenant] family found ineligible for continued occupancy by the staff shall be required to vacate the dwelling unit[.] unless the ineligibility is due to noncompliance with community service requirements pursuant to 24 C.F.R. Part 960, Subpart F as it existed on March 28, 2013. In such cases of noncompliance with community service requirements, the rental agreement shall not be renewed at the end of the twelve month term unless:

- (1) The tenant, and any other noncompliant resident, enter into a written agreement with the authority, in the form and manner required by the authority, to cure such noncompliance in accordance with such agreement; or
- (2) The family provides written assurance satisfactory to the authority that the



**tenant or other noncompliant resident no longer resides in the unit.**

(c) A [tenant] family aggrieved by the reexamination results may request a hearing pursuant to the authority's grievance procedure as provided in chapter 17-2021[, Hawaii administrative rules]. [Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§960.257, 960.607, 966.4, 966.51; HRS §§356D-4, 356D-13, 356D-31)

\*\*\*\*

§17-2028-56 Interim rent adjustment. (a) The authority may adjust a [tenant's] family's rent between reexamination if a tenant reports a change in family income. However, adjustments to rent shall not be made for covered families with reduced welfare benefit payments resulting from welfare sanctions for noncompliance with welfare self-sufficiency and work activity requirements. [(b)] Adjustments, reflecting a lower rent, shall be made effective on the first of the month following the month the report was made. **The authority will not process the rent adjustment if it confirms that the decrease in income will last less than 30 calendar days.**

**[(c)](b) A tenant who has obtained a decrease in rent under this section[,] shall report all income increases to the authority which occur prior to the next reexamination within ten business days of when tenant knows the increase will occur, and rent shall be readjusted accordingly. Any increase in rent shall be effective on the first day of the second month following the month in which the change occurred.**

[(d)](c) A tenant who fails to report any increase in income after obtaining a decrease in rent under this section shall be subject to a back rent charge retroactive to the month in which the rent increase should have been made[.] pursuant to section 17-2028-58.

(d) A tenant shall report to the authority any changes in family composition. Rent adjustment shall be made between reexaminations when a person with income is added to the family and the rent adjustment shall be effective on the first of the second month following the approved inclusion. [Eff 7/21/05; am and comp 9/4/07; am and comp ]  
(Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §§5.615, 960.257, 966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-57 Tenant transfers. (a) Tenant transfers shall be made without regard to race, sex, color, creed, age, religion, gender identity, sexual orientation, handicap, national origin, or familial status.

(b) The authority may transfer a [tenant] family to another dwelling unit:

- (1) To prevent overcrowding or under utilization of a dwelling unit as determined by the authority at the time of the annual or interim reexamination;
- (2) To preserve the purpose for which a project or unit was specifically developed or designed such as to meet the needs of the elderly or persons with disabilities;
- (3) [To meet a verifiable health or safety need;] Based on an emergency where conditions of the dwelling unit, building or project pose an immediate, verifiable threat to life, health or safety of the family;
- (4) For economic reasons affecting the tenant or the authority; [or]
- (5) For administrative reasons determined by the authority including, but not limited to, permitting modernization, renovation, or rehabilitation work and transferring eligible tenants with disabilities from State-aided public housing projects to federally-assisted public housing projects[.]; or

**(6) As a reasonable accommodation.**

(c) Tenant transfers [shall] may take priority over new admissions.

(d) A [tenant] family shall be afforded one offer to transfer to a unit that meets the criteria set forth in (b) above within the same housing project in which the [tenant] family resides. If such unit is not available, [tenant] the family may then be offered a unit in another housing project under the control of the management unit. If such a unit is not available, [tenant] the family may then be offered a suitable unit on the island on which [tenant] the family resides. Declining an offer to transfer for good cause as determined by the authority shall not be considered a refusal.

**(e) A [tenant] family requesting a transfer shall not be transferred during periods when eviction proceedings have been initiated or are in process against such [tenant] family, which includes the issuance of a notice of violation of the rental agreement by the authority for which the authority is seeking eviction, or scheduling a grievance hearing related to same or during any periods of conditional deferment of eviction action against such [tenant.] family.**

(f) A [tenant] family requesting a transfer, who is not current with rent or other charges, and who does not have an approved payment arrangement shall not be transferred until the situation is resolved to the satisfaction of the authority.

(g) A [tenant] family shall not be transferred between any federally-assisted housing programs.

(h) The authority may terminate the rental agreement of a [tenant] family who refuses to transfer as required by the authority. [Eff 7/21/05; am and comp 9/4/07; am and comp ]

(Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-58 Backcharges. (a) A [tenant] family shall pay in full any backcharges within [one hundred

eighty] ninety days from the date of notification of the backcharge[.]; provided that where the family timely reports a change in income to the authority and a backcharge results from an increase in income, payment for any backcharges shall not be due until ninety days from the date of a completed reexamination or interim rent adjustment. Failure to do so shall result in the termination of the rental agreement.

(b) The authority may, in its discretion, elect to negotiate a reasonable payment arrangement with a family to ensure payment in full of any backcharges. When the authority determines not to exercise this discretion, the family shall be responsible for the full balance of backcharges as stated in subsection

(a). [Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-59 Rental agreement termination. (a) [Tenant] A family shall give the authority at least twenty-eight days written notice that the [tenant] family will vacate the [tenant's] family's unit prior to the vacate date.

(b) The authority may terminate a rental agreement when the tenant, any member of the tenant's household, or any guest or other person under the tenant's control:

- (1) Fails to observe or perform any covenant or obligation of the rental agreement, or rule of the authority [of] or housing project, or law or ordinance of a governmental agency that pertains to or establishes standards of occupancy[;]. This includes but is not limited to the following:

- (i) Serious or repeated violation of the material terms of the rental agreement, including failure to make payments due or fulfill household obligations set forth in the rental agreement;

- (ii) Failure to provide family income, assets, employment and composition information and documentation to enable the authority to determine the family's rental rate and eligibility for continued occupancy;
  - (iii) Family no longer conforms to the occupancy limits as established by the authority for the unit occupied by the family and the family refuses to move to the first appropriate size unit offered;
  - (iv) When requested by the authority due to health and safety, repair, abatement, construction or renovation of the dwelling unit, the family refuses to move;
  - (v) Family is ineligible for continued occupancy;
  - (vi) Failure of a family member to comply with community service requirement provisions of 24 C.F.R. part 960, subpart F as it existed March 28, 2013, provided that such failure shall result in non-renewal of rental agreement and termination of tenancy at the end of the twelve-month rental agreement term;
  - (vii) At the time of admission, reexamination, interim or at any other time, the family has submitted false information or has withheld valuable information or has made wilful misstatements; and
  - (viii) Family fails to accept the authority's offer of a revision to the existing rental agreement.
- (2) Engages in the illegal use of a [controlled substance] drug or gives the authority a reasonable cause to believe that the illegal use (or pattern of illegal use) of a [controlled substance] drug or abuse (or pattern of abuse) of alcohol may interfere



- with the health, safety, or right to peaceful enjoyment of [a rental] the premises by other [residents;] tenants;
- [ (3) Whose illegal use of a controlled substance, or abuse of alcohol, is determined by the authority to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- (4) ] (3) Who the authority determines engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other [residents;] tenants;
- [ (5) ] (4) Who the authority determines engages in any drug-related criminal activity on or near the authority's [property; or] premises;
- [ (6) Tenant threatens or implies to threaten] (5) Threatens the health or safety of an employee[ / ], contractor or [agency] agent of the authority or State;
- (6) Fails to disclose use of marijuana, even if pursuant to a lawful prescription under part IX of the Hawaii uniform controlled substances act as it existed on March 28, 2013, prior to offer and acceptance of a rental agreement as required in section 17-2028-22;
- (7) Violates the smoking prohibitions pursuant to section 17-2028-60 on more than three occasions and receives written notice of said violations; provided that if tenant, any member of the tenant's household, or any guest or other person under the tenant's control receives only one violation of section 17-2028-60 in one year, and participates in and completes a smoking cessation service program within the same year, the authority will clear the one violation and shall not deem the incident as a violation for the following year;**
- (8) Fails to maintain utility services;**

- (9) Has been convicted of a felony. This subsection does not apply to tenant's guest or other person under tenant's control;
- (10) Flees to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees;
- (11) Violates a condition of probation or parole imposed under federal or state law; or
- (12) Engages in wilful damage to the authority's property.

(c) The authority shall give a tenant written notice of the proposed termination of the rental agreement [of not less than:] that conforms to 24 C.F.R. §966.4 as it existed on March 28, 2013, such as:

- (1) Fourteen days in the case of failure to pay rent[;] except for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a financial hardship exemption pursuant to section 17-2028-61(b);
- (2) A reasonable time commensurate with the exigencies of the situation in the case of creation or maintenance of a threat to the health or safety of other tenants or project employees; or
- (3) Thirty days in all other cases.

The authority shall terminate a rental agreement in accordance with chapter 356D[.], HRS.

(d) The authority may terminate a rental agreement if any member of the family engages in the use of marijuana, even if pursuant to a lawful prescription under part IX of the Hawaii uniform controlled substances act as it existed on March 28, 2013. [Eff 7/21/05; am and comp 9/4/07; am and comp ]  
(Auth: 24 C.F.R. §966.4; §§356D-4, 356D-13; 356D-98)  
(Imp: 24 C.F.R. §966.4; HRS §§356D-4, 356D-13, 356D-31, 356D-92)

§17-2028-60 Smoking prohibited. (a) Smoking is prohibited in all public housing projects, or portions of public housing projects, including inside dwelling units, unless specifically exempted by the authority in the ACOP, including:

- (1) In all common areas and community facilities in and around the authority's public housing projects. The authority may designate additional common areas in the ACOP; and
- (2) Within a presumptively reasonable minimum distance of twenty feet from entrances, exits, and windows that open to common areas, community facilities, and dwelling units, and ventilation intakes that serve common areas, community facilities, and dwelling units, including enclosed or partially enclosed areas where smoking is prohibited.

(b) This prohibition applies to the use of marijuana, even if its use is pursuant to a lawful prescription under part IX of the Hawaii uniform controlled substances act as it existed on March 28, 2013 that prescription was given subsequent to tenant placement in the dwelling unit.

(c) Where smoking is not prohibited in a dwelling unit pursuant to subsection (a) and the household includes a person who smokes as disclosed pursuant to section 17-2028-22, the family shall pay a non-refundable monthly fee of \$5.00.

(d) The authority may discontinue the monthly fee required in subsection (c) when a family can demonstrate to the authority reasonable cause to believe that no member of the household continues to smoke. For the purposes of this subsection:

- (1) "Reasonable cause to believe" means by a preponderance of the evidence; and
- (2) In determining whether to discontinue charging the monthly fee, the authority may consider completion of a smoking cessation program.



[Eff and comp ] (Auth: §§356D-4, 356D-13) (Imp: 24 C.F.R. §§903.7, 966.3; HRS §§356D-4, 356D-13, 356D-31)

## SUBCHAPTER 5

### RENTS [AND], SECURITY DEPOSITS, AND OTHER CHARGES

§17-2028-61 Minimum rents. (a) There is established a minimum rent of [\$0.00] \$50.00 per month.

(b) The authority shall grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship attributable only to the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program;
- (2) The family would be evicted because it is unable to pay the minimum rent;
- (3) The income of the family has decreased because of changed circumstances, including loss of employment;
- (4) A death has occurred in the family; and
- (5) Other circumstances determined by the authority or HUD.

(c) If a family requests a financial hardship exemption, the authority shall suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption, and continuing until the authority determines whether there is a qualifying financial hardship and whether it is temporary or long term.

**(d) When the authority determines that a qualifying financial hardship is temporary, the authority shall reinstate the minimum rent from the beginning of the suspension of the minimum rent ninety days after receiving the exemption request. The authority shall offer a reasonable payment arrangement**

**to the family to ensure payment in full of any backcharges.**

(e) When the authority determines a qualifying financial hardship is long term, the authority shall exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.

(f) When the authority determines that there is no qualifying financial hardship exemption, the authority shall reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family shall be responsible for backcharges as established in section 17-2028-58 and shall not be eligible for payment arrangements as provided under section 17-2028-58(b). [Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §§356D-4, 356D-13) (Imp: 24 C.F.R. 5.630; HRS §§356D-4, 356D-13, 356D-31)

§17-2028-62 Choice of rent. Once a year, the authority shall give each [tenant] family the opportunity to choose between two methods of determining the monthly tenant rent. The [tenant] family may choose to pay either a flat rent or income-based rent.

(a) The flat rent shall be the fair market rents ("FMRs") that are determined by HUD, at least annually, pursuant to 24 C.F.R. §888.113[.] as it existed on March 28, 2013. These [fair market rents,] FMRs, which include utilities (exclusive of telephone and cable television), are established for dwelling units of various bedroom sizes[, and which are incorporated by reference and attached as exhibit K]. Because the FMRs are determined by HUD and the authority has no discretion to amend or change the FMRs, the FMRs shall be established without a public hearing as provided in Chapter 91-3(d), HRS.

(b) The income-based rent is based on thirty per cent of [tenant's] the family's monthly adjusted income or ten per cent of the family's monthly income,

or the minimum rent set forth in section 17-2028-61, whichever is greater.

(1) The income-based rent does not include charges for excess utility consumption or other charges.

(2) **The income-based rent shall not exceed the total tenant payment pursuant to 24 C.F.R. §5.628 as it existed on March 28, 2013, for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the authority shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the authority pays the utility supplier, the authority shall notify the family of the amount of the utility reimbursement paid to the supplier.**

(3) For purposes of establishing the income-based rent, the authority shall exclude from annual income the earned income of previously unemployed family members and increases in earnings of a family member during participation in any economic self-sufficiency or other job training program as provided for in 24 C.F.R. §960.255 as it existed on March 28, 2013 and the PHA plan.

(c) If a [tenant] family is unable to pay the flat rent because of financial hardship, the [tenant] family may at any time request a switch to payment of income-based rent prior to the next annual option to select the type of rent. [Eff 7/21/05; am and comp 9/4/07; am and comp ] (Auth: HRS §356D-15) (Imp: HRS §§356D-4, 356D-13; 24 C.F.R. §§5.628, 960.253, 960.255; HRS §§356D-4, 356D-13, 356D-31)

\*\*\*\*

2. Material, except sources notes, to be

repealed is bracketed. New material is underscored.

3. Additions to source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 17-2028, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
DAVID J. GIERLACH, Chairperson  
Board of Directors  
Hawaii Public Housing Authority

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

## FOR ACTION

**MOTION:** To Adopt Amendments to and Compilation of Chapter 17-2020 “Evictions – Practice and Procedure”, Hawaii Administrative Rules, and to Authorize the Executive Director to Undertake All Actions Necessary under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01 and to Implement the Amendments

### I. FACTS

- A. The Hawaii Public Housing Authority (HPHA) Federal Low Income Public Housing (LIPH) inventory is governed by a variety of federal, state, and agency statutes and rules, such as the Code of Federal Regulations and Chapter 356D, Hawaii Revised Statutes (HRS).
- B. Act 196, Session Laws of Hawaii (SLH) 2005, as amended by Act 180, SLH 2006, separated the housing financing and development functions from the Housing and Community Development Corporation of Hawaii (HCDCH) and created the Hawaii Housing Finance and Development Corporation (HHFDC), and the Hawaii Public Housing Authority (HPHA). Act 196 became effective on July 1, 2006. Act 196 provided that all HCDCH administrative rules would remain in effect until amended.
- C. Act 160, SLH 2012 required the HPHA to conform all grievance and eviction practices to federal standards, reduced the required number of board members required to hear an eviction, and authorized the use of video teleconferencing technology for the conduct of hearings.
- D. Sections 356D-13 and 356D-98, HRS (Attachment A), authorize the HPHA to adopt administrative rules with the force and effect of law to govern evictions from its federal low income public housing inventory.
- E. The HPHA has consistently managed the federal LIPH evictions in accordance with Chapter 17-2020 “Evictions – Practice and Procedure”, Hawaii Administrative Rules (HAR).
- F. In September 2012, amendments to 17-2020, HAR, were developed for adoption and compilation, to effectuate the current statutory framework, along with housekeeping amendments to the Rule, such as updating the agency’s name, and the statutory references within the Rule, subject to review and approval by the Department of the Attorney General.

- G. Upon review of the amendments to Chapter 17-2020, HAR, the Department of the Attorney General recommended further revisions to Chapter 17-2020, HAR, for clarification and consistency with Chapter 17-2028, HAR, "Federally-Assisted Public Housing Projects", and applicable Code of Federal Regulations.
- H. Once approved by the HPHA Board of Directors, the agency must request permission to take the proposed Rule to public hearing from the Governor. The HPHA staff must give thirty days' notice to the public and hold hearings on the Islands of Kauai, Oahu, Maui, and Hawaii.
- I. Once the hearing process has been completed, the HPHA must request the Governor to adopt the Rule and file certified copies with the Office of the Lieutenant Governor.

## II. DISCUSSION

- A. Section 17-2020-2, HAR: The proposed amendments to Chapter 17-2020, HAR, would add definitions of "board" or "eviction board", "drug-related criminal activity", "dwelling unit", "rental agreement", "violent criminal activity", and amend the definition of "criminal activity" to conform to the definition used in Chapter 17-2028, HAR, "Federally-Assisted Housing Projects." The definition of "drug" would also be amended to delete the exception for marijuana prescribed pursuant to part IX of the Hawaii Uniform Controlled Substances Act.
- B. Section 17-2020-4, HAR: The proposed amendments would allow confidential records of an eviction hearing to be released by request of a tenant who is a party to the hearing or upon filing a notice of appeal.
- C. Section 17-2020-5, HAR: The proposed amendments would reference Section 17-2028-59, HAR, "Federally-Assisted Public Housing Projects", for the grounds for termination of tenancy and eviction, and include as grounds for termination other good cause set forth in the rental agreement.
- D. Section 17-2020-33, HAR: The proposed amendments would add to the list of non-curable violations, violent criminal activity; failure to disclose the use of marijuana, even if prescribed pursuant to part IX of the Hawaii Uniform Controlled Substances Act, prior to offer and acceptance of a rental agreement; failure to abide by the smoking prohibition in Section 17-2028-60, HAR; felony conviction of a family member; and termination of the rental agreement pursuant to Section 17-2028-59, HAR, or 24 C.F.R. 966.4, for consistency with Chapter 17-2028, HAR.

- E. The proposed amendments in Attachment B include all changes being proposed, including those approved by the HPHA Board of Directors in September 2012. New substantive changes are highlighted and bolded.
- F. The proposed amendments in the form attached as Attached B have been reviewed and approved by the Department of the Attorney General.
- G. Following approval from the Governor to hold public hearings on the proposed amendments, the Executive Director will hold public hearings on the Islands of Kauai, Oahu, Maui, and Hawaii at a date and locations to be determined.
- H. Based on testimony received during the public viewing and comment period, the Executive Director will make any non-substantive amendments to the draft amendments to and compilation of the Rule prior to or following the public hearing.
- I. After the public hearings, the Executive Director will transmit amendments to and compilation of Chapter 17-2020, HAR, to the Governor for final approval provided that no substantive amendments are made. Staff anticipates the following updated approximate schedule of the process:

<u>Action</u>	<u>Timeframe</u>
Board For Action (adopt amendments)	April 18, 2013
Request to Governor for public hearing	April 19, 2013
Receive Governor authorization	May 13, 2013
Publish hearing notice (30 day notice)	May 14, 2013
Public Hearing	June 13, 2013
Finalize Rule/Transmit to Governor for Adoption	June 17, 2013
Rule effective	July 1, 2013



### III. RECOMMENDATION

That the HPHA Board of Directors Adopt Amendments to Chapter 17-2020 "Evictions – Practice and Procedure", Hawaii Administrative Rules, and to Authorize the Executive Director to Undertake All Actions Necessary under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01, to Implement the Amendments.

Attachment A: Sections 356D-13, and 356D-98, Hawaii Revised Statutes

Attachment B: Draft changes to Chapter 17-2020, Hawaii Administrative Rules  
(Ramseyer format)

Prepared by: Kiriko Oishi, Chief Compliance Officer *Kuo*

Approved by the Board of Directors  
on the date set forth above

\_\_\_\_\_  
David Gierlach  
Chairperson

**§356D-13 Administration of federal programs.** (a) The authority may carry out federal programs designated to be carried out by a public housing agency, or entity designated by the authority.

(b) The authority shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the authority and may be used to cover the administrative expenses of the authority.

**§356D-98 Rules.** The authority may adopt rules pursuant to chapter 91 necessary for the purposes of this part.

Rules Amending Title 17  
Hawaii Administrative Rules

April 18, 2013

1. Chapter 2020 of Title 17, Hawaii Administrative Rules, entitled "Eviction - Practice and Procedure" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

[HOUSING AND COMMUNITY DEVELOPMENT CORPORATION  
OF HAWAII] HAWAII PUBLIC HOUSING AUTHORITY

CHAPTER 2020

EVICTIION - PRACTICE AND PROCEDURE

Subchapter 1 General Provisions

\$17-2020-1	Purpose
\$17-2020-2	Definitions
\$17-2020-3	Communications
\$17-2020-4	Asset limits
\$17-2020-5	Grounds for termination of tenancy and eviction

Subchapter 2 Hearing Procedure

\$17-2020-11	Notice of cause for cases referred for eviction prior to July 1, 2012
\$17-2020-12	Notice of cause for cases referred for eviction on or after July 1, 2012
\$17-2020-13	Notice of hearing
\$17-2020-14	Request for subpoenas

### Subchapter 3 Hearings

#### A. Conditions

§17-2020-21 Counsel  
 §17-2020-22 Motions  
 §17-2020-23 Waiver of procedure  
 §17-2020-24 Records

#### B. Hearings

§17-2020-31 Eviction Board  
 §17-2020-32 Default  
 §17-2020-33 Curable and Non-Curable Violations

### Subchapter 4 Appeals

§17-2020-41 Appeals of contested case hearings

### Subchapter 5 Miscellaneous Provisions

§17-2020-51 Severability  
 §17-2020-52 Number

Historical Note: Chapter 17-2020, Hawaii Administrative Rules, is substantially based upon chapter 17-2020, Hawaii Administrative Rules, [Eff 8/6/04; am and comp ], chapter 17-501, Hawaii Administrative Rules, [Eff 1/1/81; am and comp 5/26/98; R 10/25/99], and Chapter 15-182, Hawaii Administrative Rules. [Eff 10/25/99; R 8/6/04]

## SUBCHAPTER 1

## GENERAL PROVISIONS

§17-2020-1 Purpose. These rules shall govern the practice and procedure for terminating the tenancy of persons using or occupying any unit in a project owned or operated by the [housing and community development corporation of Hawaii] Hawaii public housing authority except for rental housing projects governed by [chapter 15-173] chapter 356D-44, HRS. These rules afford tenants an opportunity for a hearing if a tenant disputes any action by the [corporation] authority to evict the tenant from the tenant's unit. These rules shall be liberally construed to ensure that the rights of the parties are preserved in a just and timely resolution of every hearing.

[Eff 8/6/04; am and comp ] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §356D-98)

§17-2020-2 Definitions. [As used in these rules, except otherwise required by context:] Whenever used in this chapter, unless specifically defined:

"Agreement" means any lease, rental agreement, permit, or license covering the use and occupation of any unit or other premises owned or controlled by the [corporation.] authority.

"Alcohol abuse" means a tenant or any member of the tenant's household has engaged in abuse or [a] pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, or furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

"Authority" means the Hawaii public housing authority.

**"Board" or "eviction board" means the board appointed by the authority to conduct eviction hearings and terminate rental agreements in accordance with this chapter.**

"C.F.R." means the United States Code of Federal Regulations.

["Corporation" means the housing and community development corporation of Hawaii.]

"Criminal activity" means the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in[:

- (1) the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug; or
- (2) any illegal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage;]

any conduct constituting a criminal violation of federal law, HRS, or local ordinances regardless of whether there has been an arrest or conviction for such activity and without satisfying the standard of proof used for a criminal conviction.

"Document" means written decisions, orders, and notices issued for the purposes of this chapter.

"Drug" means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. §802) as it existed on March 28, 2013.

"Drug related criminal activity" means the illegal manufacture, sale, distribution, or use of a drug, or possession of a drug with intent to manufacture, sell, distribute or use the drug.

["Examiner" means a trial examiner, hearing board or eviction board appointed by the corporation for the purposes of chapter 201G, HRS.]

"Dwelling unit" means a residential unit in a housing project.

"Grievance hearing" means the hearing prescribed in the grievance procedure set forth in rules of the [corporation] authority.

"HRS" means the Hawaii Revised Statutes.

"Hearing" means a quasi-judicial proceeding in which the [corporation] authority prepares to terminate an agreement.

"Hearings clerk" means the person responsible for receiving, recording, and preserving the records of the [examiner] eviction board.

"Hearings officer" means the person representing the [corporation] authority in a hearing.

"Party" means a person or agency as defined in section [201G-51,] 356D-91, HRS, as it existed on March 28, 2013.

"Presiding officer" means the [trial examiner, a member of the hearing board, or a] member of the eviction board duly elected by a majority of the board members to serve as its chairman where the eviction board is comprised of more than one member.

"Project manager" means the [corporation's] authority's representative assigned to manage projects in a management area or any other employee of the [corporation] authority specifically designated by position description.

**"Rental agreement" means the agreement or contract containing the terms and conditions of occupancy of a dwelling unit entered into by the tenant and authority.**

"Tenant" means [a person] the person or persons who enter into a rental agreement with the authority to reside in a dwelling unit and who [is] are subject to eviction proceedings under this chapter.

"U.S.C." means the United States Code.

**"Violent criminal activity" means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.** [Eff

8/6/04; am and comp ] (Auth: 24 CFR \$966.4; HRS §§92-6, 356D-4, 356D-13, 356D-98) (Imp: HRS §§356D-92, 356D-93, 356D-94, 356D-98)

\$17-2020-3 [Examiner.] Communications. (a) Communications to the [examiner] eviction board may be mailed or delivered to the [corporation's] authority's hearings office [in the respective county in care of the hearings clerk].

(b) [When the examiner is a hearing board, or an eviction board, a] A quorum [of members] of the eviction board, consisting of at least one, but not more than three members, shall be present to validate any action taken.

(c) No employee of the [corporation] authority shall be [an examiner] an eviction board member, unless specifically designated by the [corporation] authority.

(d) All documents issued by the [examiner] eviction board may be executed by facsimile signature.  
[Eff 8/6/04; am and comp ] (Auth: 24  
CFR §966.4; HRS §§92-15, 356D-4, 356D-13, 356D-98)  
(Imp: 24 CFR §966.4; HRS §§356D-92, 356D-93, 356D-98)

§17-2020-4 Process service. (a) All documents issued for the purposes of this chapter shall be served either:

- (1) Personally to the tenant or adult household member by [a law enforcement officer] any person who is not a party and is not less than 18 years of age of the State [or county, or an officer appointed by the corporation];  
or
  - (2) By certified mail return receipt requested;  
or
  - (3) If personal service or service by certified mail cannot be effectuated, the document or documents may be served:
    - (i) By posting the document or documents on the unit occupied by the tenant and by first class mail to the party's last known address; or
    - (ii) By publication in a newspaper of general circulation and by first class mail.
- (b) Service upon a party shall be complete if:
- (1) The party or the party's attorney is personally served;
  - (2) The party signs the receipt for certified mail;
  - (3) The document or documents are posted on the unit occupied by the tenant and mailed to the party's last known address by first-class mail;



- (4) Upon publication in a newspaper of general circulation; or
- (5) By special order of the [examiner,] eviction board, upon a finding that service by other means is not practicable, a document is posted on the unit occupied by the party.  
[Eff 8/6/04; am and comp ]  
(Auth: HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §§356D-92, 356D-93, 356D-98)

\$17-2020-5 Grounds for termination of tenancy and eviction. (a) The [examiner] eviction board shall determine whether there are sufficient grounds for termination of the rental agreement.

**(b) The [following constitutes] grounds for termination of the rental agreement[:]**

- (1) Serious or repeated violation of material terms of the rental agreement, including, but not limited to:**
  - (A) Failure to make payments due under the rental agreement;**
  - (B) Failure to fulfill household obligations as defined in the rental agreement.**
- (2) Other good cause, including, but not limited to, the following:**
  - (A) Criminal activity or alcohol abuse;**
  - (B) Discovery after admission of facts that made the tenant ineligible;**
  - (C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income; and**
  - (D) Failure of a family member to comply with service requirement provisions of 24 C.F.R. part 960, subpart F; and**
  - (E) Failure to accept the corporation's offer of a revision to the existing rental agreement, subject to the requirements of 24 C.F.R. 966.4(1).]**

**and other good cause are set forth within the tenant obligations of the rental agreement, section 17-2028-59 and as may be allowed by 24 CFR §966.4.** [Eff 8/6/04;

am and comp ] (Auth: 24 CFR §966.4;  
HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4;  
HRS §§356D-92, 356D-98)

SUBCHAPTER 2

[PRE-] HEARING PROCEDURE

[§17-2020-11 Notice of cause for cases referred for eviction prior to June 28, 2002. (a) Any violation under section 201G-52, HRS, shall constitute cause for the project managers within each county to initiate eviction proceedings. The tenant shall be notified in writing and the document shall state the reason for and the date of the proposed termination of the agreement. The document shall also inform the tenant of the tenant's rights to reply to the corporation's staff and to request a grievance hearing.

(b) The tenant shall be notified in accordance with the terms of the agreement.

(c) If the tenant fails to respond within the time period prescribed by the notice of proposed termination; the project manager shall submit a written request to the examiner that the tenant be evicted.]

[[Eff: 8/6/04; R ] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §356D-98)]

§17-2020-[12]11 Notice of cause for cases referred for eviction [on or after June 28, 2002] prior to July 1, 2012. (a) Any violation under section [201G-52] 356D-92, HRS, occurring prior to July 1, 2012 shall constitute cause for the project managers within each county to initiate eviction proceedings. The tenant shall be notified in writing and the document shall state the reason for and the date of the proposed termination of the agreement. The document shall also inform the tenant of the tenant's rights to reply to the [corporation's] authority's staff and to request a grievance hearing.

(b) The tenant shall be notified in accordance with the terms of the rental agreement.

(c) If the tenant fails to respond within the time period prescribed by the notice of proposed

termination, the project manager shall submit a written request to the [examiner] eviction board that the tenant be evicted.

(d) If the violation is for delinquent payment in rent,

- (1) The written notice shall conform to the requirements of section [201G-52(b), HRS;] 356D-92, HRS, as it existed on June 30, 2012 (prior to the effective date of Act 160, Session Laws of Hawaii 2012); and
- (2) The [corporation] authority shall schedule a meeting with the tenant to discuss the delinquency.
- (3) If the tenant fails to attend the meeting and does not contact the [corporation] authority or the [corporation's] authority's agents to reschedule the meeting, the [corporation] authority shall provide the tenant with a second written notice conforming to the requirements of section [201G-52(e), HRS.] 356D-92 (e), HRS, as it existed on June 30, 2012 (prior to the effective date of Act 160, Session Laws of Hawaii 2012).

(e) At the meeting, the [corporation] authority or its agent and the tenant shall complete, sign, and date a checklist conforming to the requirements of section [201G-52(c), HRS,] 356D-92, HRS, as it existed on June 30, 2012 (prior to the effective date of Act 160, Session Laws of Hawaii 2012) to memorialize the meeting.

(f) If the tenant appears at the meeting, the [corporation] authority will consider whether the tenant's situation is appropriate for a reasonable payment plan. The [corporation] authority or its agent may consider, [but is not limited to considering] without limitation, the following factors to determine whether the tenant's situation is appropriate for a reasonable payment plan:

- (1) The amount of the delinquent balance;
- (2) The amount of tenant's monthly rent charge;
- (3) The tenant's household income;
- (4) Any other sources of income of the tenant;
- (5) The history of rent payment by the tenant;

- (6) Any history of other violations of the rental agreement by the tenant;
- (7) The cause of the delinquency; and
- (8) Any mitigating factors.
- (g) The [corporation] authority or its agent may consider, [but is not limited to considering,] without limitation, the following factors to determine if the payment plan is reasonable:
  - (1) The tenant's household income;
  - (2) Any other sources of income of the tenant;
  - (3) Any other debts of the tenant;
  - (4) Whether the tenant can clear the delinquent balance within six months; and
  - (5) Any hardship on the tenant.
- (h) If the [corporation] authority or its agent determines that the tenant will be unable to clear the delinquent balance within a six-month period, the tenant's situation is not appropriate for a reasonable payment plan.
- (i) If the [corporation] authority or its agent determines that the tenant's situation is appropriate for a reasonable payment plan, one may be offered as agreed upon between the [corporation] authority or its agent and the tenant. A reasonable payment plan shall not exceed a period of six months.
- (j) The [corporation] authority shall inform the tenant of its decision in writing. The written notice shall further notify the tenant of the tenant's right to request a grievance hearing within thirty days of receipt of the notice.
- (k) In the event the tenant breaches the reasonable payment plan, the [corporation] authority or its agent shall proceed to terminate the tenant's tenancy by referring the matter to the hearings office to schedule a hearing before the eviction board. [Eff: 8/6/04; am and ren ] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-92, 356D-98)

\$17-2020-12 Notice of cause for cases referred for eviction on or after July 1, 2012. (a) Any violation under section 356D-92, HRS, occurring on or after July 1, 2012, shall constitute cause for the project managers within each county to initiate eviction proceedings. The tenant shall be notified in writing and the document shall state the reason for and the date of the proposed termination of the agreement. The document shall also inform the tenant of the tenant's rights to reply to the authority's staff and to request a grievance hearing.

(b) If the violation is for delinquent payment of rent, the authority may negotiate a reasonable payment arrangement with a family in accordance with section 17-2028-58.

(c) The tenant shall be notified in accordance with 24 C.F.R. §966.4(k) and (l)(3) and section 356D-93(a), HRS, as they existed on March 28, 2013.

(d) If the tenant fails to respond within the time period prescribed by the notice of proposed termination, the project manager shall submit a written request to the eviction board that the tenant be evicted. [Eff and comp ] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §356D-92, 356D-98)

\$17-2020-13 Notice of hearing. Notice of hearing shall meet the requirements of [chapter 201G, HRS.] 24 C.F.R. §966.4(k), (l)(3), (m) and section 356D-93(a), HRS, as they existed on March 28, 2013. [Eff: 8/6/04; am and comp ] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-92, 356D-93, 356D-98)

\$17-2020-14 Request for subpoena. (a) Only [an examiner or] the parties to the hearing may request the issuance of a subpoena, [provided that] subject to subsection (b) [shall be complied with]. The [examiner or the examiner's] eviction board or its designated representative shall issue the subpoena.

(b) The request for issuance of a subpoena of a witness shall be in writing and shall state the name

and address of the desired witness and the reasons why the testimony of the witness is material and relevant to the issues in the hearing. The party requesting the subpoena shall pay to the witness the same fees and mileage as prescribed in chapter 607, HRS. The request for issuance of a subpoena duces tecum for documents and records shall be in writing. The party requesting the subpoena duces tecum for documents and records shall pay all copying costs. The request shall specify the particular document or record, or part thereof sought, and shall state the reasons why the document or record is material and relevant to the issues of the hearing. [Eff 8/6/04; am and comp ]  
 (Auth: 24 CFR §966.4; HRS §§92-16, 356D-4, 356D-13, 356D-98, 607-12) (Imp: 24 CFR §966.4; HRS §§356D-92, 356D-98)

## SUBCHAPTER 3

[HEARING PROCEDURE] HEARINGS

## A. Conditions

§17-2020-21 Counsel. (a) Unless otherwise directed by the [presiding officer] eviction board, one counsel for each party represented shall be permitted to conduct direct and cross examination of a witness, state and argue an objection or motion, and make opening or closing argument.

(b) A tenant may appear [in] on the tenant's own behalf or with another person as the tenant may authorize. [Eff 8/6/04; am and comp ]  
 (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98)  
 (Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

§17-2020-22 Motions. (a) All motions shall state the grounds and shall set forth the relief or order sought. Motions need not be in writing.

(b) All motions shall be presented to the [examiner] eviction board at the commencement of the hearing. If a written motion is presented, a copy shall be provided to the opposing party.

(c) The opposing party may state opposition to any motion presented to the [examiner] eviction board. The [examiner] eviction board may consider all motions and opposing motions [in executive session] and shall rule on each motion when appropriate. [Eff 8/6/04; am and comp ] (Auth: HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §§356D-93, 356D-98)

§17-2020-23 Waiver of procedure. Upon agreement of the parties, any procedure in a hearing may be modified or waived and informal disposition may be made of any case by agreed settlement, consent order, or default. [Eff 8/6/04; comp ] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)



§17-2020-24 Records. (a) The hearings clerk shall keep written summaries of all hearings. Neither a full transcript nor recording of the hearing shall be required.

**(b) All records of a hearing shall be confidential pursuant to section 92F-13(2), HRS, and released only at the direction of the [examiner or] eviction board, by judicial order[.], upon request by a tenant who is a party to the hearing, or upon the filing of a notice of appeal pursuant to chapter 91, HRS, and section 356D-96, HRS.** [Eff 8/6/04; am and comp ] (Auth: 24 CFR §966.4; HRS §§91, 92F-13(2), 356D-4, 356D-13, 356D-96, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

B. Hearings

§17-2020-31 [Hearings.] Eviction Board. (a) In all hearings where the eviction board consists of more than one member, the presiding officer shall preside. [The vice-chairman of a hearing board or an eviction board shall preside at a hearing in the absence of the presiding officer.]

(b) The [presiding officer] eviction board shall determine the order of appearance of the parties to a hearing and shall administer the oath to all witnesses as prescribed by section 621-12, HRS. The [presiding officer] eviction board may limit the time of each witness giving testimony upon a particular issue.

(c) The eviction board shall consist of not less than one and no more than three members, of which one member shall be a tenant.

[(c)](d) Hearings shall be conducted in an informal manner unless otherwise required by law.

[(d)](e) The [examiner] eviction board may remove any person who disrupts a hearing.

[(e)](f) If a tenant, the tenant's attorney, or the tenant's representative is removed for disruptive conduct, the hearing may continue and a determination made based upon the available evidence and testimony presented.

~~[(f)]~~(g) All hearings shall be confidential and closed to the public unless the tenant agrees otherwise.

(h) The hearing may be conducted through the use of video conferencing technology in accordance with section 356D-93(b), HRS, as it existed on March 28, 2013. The authority shall notify the tenant, the tenant's attorney, or the tenant's representative in writing prior to the scheduled hearing date that the hearing shall be conducted using video conferencing technology. [Eff 8/6/04; am and comp  
] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98)  
(Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

§17-2020-32 Default. A tenant who fails to appear at a hearing after being duly notified may be found in default and the [examiner] eviction board may proceed with the hearing. [Eff 8/6/04; am and comp  
] (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-98)  
(Imp: 24 CFR §966.4; HRS §§356D-93, 356D-98)

§17-2020-33 Curable and Non-Curable Violations.

(a) The [examiner] eviction board shall determine whether or not the violation of the rental agreement is curable by the tenant. A violation is curable if the violation for which the tenant is being referred is a first offense and is not defined as a non-curable violation.

- (b) Non-curable violations include:
  - (1) Chronic or consistent violations of any material term of the rental agreement;
  - (2) A history of chronic or consistent rent delinquency;
  - (3) Violations of any material term of the rental agreement subsequent to a finding of violation of said term by [a hearing or] an eviction board;
  - (4) Any violations that threaten the health or safety of the other residents or the [corporation's] authority's employees or representatives;

- (5) Any drug-related criminal activity [occurring on or near the project premises;] or violent criminal activity;
- (6) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the other residents or the [corporation's] authority's employees or representatives;
- (7) Where the tenant has received notice from the United States Department of Housing and Urban Development that the tenant is no longer eligible to remain in the unit[.];
- (8) Where the tenant fails to disclose the use of marijuana, even if pursuant to a lawful prescription under part IX of the Hawaii uniform controlled substances act as it existed on March 28, 2013, prior to offer and acceptance of a rental agreement;
- (9) Where the tenant fails to abide by smoking prohibitions pursuant to section 17-2028-60;
- (10) Where any member of the family has been convicted of a felony;
- (11) Termination of the rental agreement pursuant to section 17-2028-59; or
- (12) As may be required by 24 C.F.R. §966.4 as it existed on February 19, 2013.

[Eff 8/6/04; am and comp ]  
 (Auth: 24 CFR §966.4; HRS §§356D-4, 356D-13, 356D-94, 356D-98) (Imp: 24 CFR §5.100; 24 CFR §966.4; HRS §356D-94, 356D-98)

SUBCHAPTER 4

APPEALS

[§17-2020-41 Appeals of contested case hearings referred for eviction prior to June 28, 2002. (a) An appeal of the decision of the examiner may be taken to the corporation as provided in section 201G-54, HRS. The appeal shall be in writing and may be mailed or delivered to the corporation's office at 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813, in care of the hearings clerk. The appeal may be heard and decided by the corporation or an appeals board appointed by the corporation.

(b) The corporation shall give written notice of the appeal hearing to the tenant fixing the date, time, and place of the appeal hearing. The notice shall be given at least five days before the date set for the appeal hearing.

(c) A tenant who fails to appear at an appeals hearing after being duly notified may be found in default and the corporation may proceed with the hearing.

(d) The corporation's decision shall be based solely on the record of the examiners which may be orally summarized by the hearings officer.

(e) Any person aggrieved by the final decision and order of the corporation may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section 201G-57, HRS.] [[Eff 8/6/04; R ] (Auth: HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §356D-98)]

§17-2020-[42] 41 Appeals of contested case hearings [referred for eviction on or after June 28, 2002]. Any person aggrieved by the final decision and order of the [examiner] eviction board may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section [201G-57,] 356D-96, HRS. [Eff 8/6/04; am and ren ] (Auth: 24 CFR §966.4; HRS

\$\$356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS  
\$\$356D-96, 356D-98)

## SUBCHAPTER 5

## MISCELLANEOUS PROVISIONS

§17-2020-51 Severability. If any part, section, sentence, clause, or phrase of these rules or its application to any person or circumstance is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases or applications of these rules to other persons or circumstances shall not be affected.

[Eff 8/6/04; comp ] (Auth HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §356D-98)

§17-2020-52 Number. The use of all words used in the singular shall extend to and include the plural.

[Eff 8/6/04; comp ] (Auth: HRS §§356D-4, 356D-13, 356D-98) (Imp: HRS §356D-98)

[§17-2020-53 Termination of rental agreement based on Public Law 104-120. The corporation may also terminate a rental agreement as provided for in section 15-190-59.]" [[Eff 8/6/04; R ] (Auth: 42 U.S.C. §1437d; Pub. L. 104-120; HRS §§356D-4, 356D-13, 356D-98) (Imp: 24 CFR §966.4; HRS §§356D-92, 356D-98)]

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 17-2020, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
DAVID J. GIERLACH, Chairperson  
Board of Directors  
Hawaii Public Housing Authority

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General



## FOR ACTION

**MOTION:** To Adopt Amendments to and Compilation of Chapter 15-185-25 "Section 8 - Housing Choice Voucher Program", Hawaii Administrative Rules, and Adopt Amendments to the Section 8 Housing Choice Voucher Program's Administrative Plan to Remove Waitlist Preferences, to Update all Chapter Numbers, and Update References to Applicable State Statutes and Federal Regulations, Subject to Review by the Department of the Attorney General; and to Authorize the Executive Director to Take All Actions Necessary Under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01, to Implement the Amendments, including Amending the Rules to Incorporate Revisions Recommended by the Department of the Attorney General

### I. FACTS

- A. This For Action is the result of the Hawaii Public Housing Authority's Board of Directors approval to amend the Five Year and Annual Public Housing Agency (PHA) Plan on January 17, 2013, which included the removal of existing preferences for the Section 8 Housing Choice Voucher Program and provided that Housing Choice Vouchers would be awarded to applicants by date and time of the application.
- B. Sections 356D-4 and 356D-13 (Attachment A) authorize the HPHA to adopt administrative rules with the force and effect of law to govern its federal programs.
- C. The establishment of local preferences for the selection of families admitted to the program is a PHA option. The U.S. Department of Housing and Urban Development (HUD) PIH notice 2012-15 regarding Streamlining Administrative Practices in the Housing Choice Voucher program, recommended to PHAs needing to reduce administrative burden and administrative costs to eliminate all local preferences and house families solely by date and time of application (Attachment B). HUD's reasoning was that this approach eliminates the staff time needed to verify the preferences and the ongoing monitoring of the waiting list to ensure compliance with the preference system. The PIH Notice required PHAs to amend the Section 8 Administrative Plan to reflect this change.
- D. The HPHA has consistently managed the Section 8 Housing Choice Voucher Program in accordance with Chapter 15-185-25, Hawaii

Administrative Rules (HAR), "Section 8 – Housing Choice Voucher Program", as well as the Section 8 Administrative Plan. Amendments to these documents are necessary to effectuate the removal of the preferences.

- E. The Hawaii Administrative Rules for the Section 8 HCV program have not been updated since December 3, 2001, and still bear references to the Housing and Community Development Corporation of Hawaii, and Chapter 201G, Hawaii Revised Statutes. Additionally, the administrative rules need to be renumbered from Title 15 under the Department of Business Economic Development and Tourism to Title 17 under the Department of Human Services.
- F. Once approved by the HPHA Board of Directors, the agency must request permission to take the proposed Rule to public hearing from the Governor. The HPHA staff must give thirty days' notice to the public and hold hearings on the Islands of Kauai, Oahu, Maui, and Hawaii.
- G. Once the hearing process has been completed, the HPHA must request the Governor to adopt the Rule and file certified copies with the Office of the Lieutenant Governor.

## II. DISCUSSION

- A. The HPHA's intention in removing the waitlist preferences is to streamline the application process and remove administrative burdens from the leasing staff, saving time and resources resulting in fast processing of families; to increase the issuance of vouchers and funding for the participants; and to avoid the recapture of HAP funds due to the delays in processing applicants.
- B. The HPHA had met with and discussed the preference changes with the Resident Advisory Board in September 2012. The Resident Advisory Board approved the changes to the preference criteria.
- C. The proposed amendments to Chapter 15-185, HAR, would update the rules regarding preferences to determine eligibility for housing assistance. All clients would be called up from the waitlist according to the date and time of their application. The Hawaii Administrative Rules will be amended as follows:

1. By repealing Section 15-185-25, HAR, in its entirety.
2. By amending Section 15-185-26(c), HAR, to read as follows:

(c) Placement of applicants on the waiting list shall be based upon ~~[the following:~~

- ~~(1) — Applicable local preferences; and~~
- ~~(2) — Date] date and time of application's receipt.~~

3. By amending Section 15-185-29(a), HAR, to read as follows:

(a) Selection for certification shall be from the established waiting list and shall be based on ~~[the following:~~

- ~~(1) — Applicable local preferences; and~~
- ~~(2) — Date] date and time of receipt of application.~~

These amendments can be seen in Ramseyer format in Attachment C. Any other references to placement by preferences that may be found in Chapter 15-185, HAR, will also be removed.

- D. The proposed amendment to the Section 8 Housing Choice Voucher Administrative Plan would also update HPHA policies regarding preferences to determine eligibility for housing assistance. All clients would be called up from the waitlist according to the date and time of their application. The Section 8 Administrative Plan will be amended to remove all preferences for eligibility as follows:

#### 4-III.C. Selection Method

\*\*\*\*\*

#### PHA Policy

~~[Each preference is of equal weight and an applicant who qualifies for any of the preferences shall receive a voucher before any other applicant who is not so qualified regardless of (1) Place on the waiting list; of (2) date or time of submission of an application.]~~  
Eligible applicants shall be certified in the order of the dates and times in which their applications are received.

All preferences or references to placement by preferences subsequently listed in the Administrative Plan will be deleted as detailed in Attachment D, as well as elsewhere in the Administrative Plan.

- E. This motion was previously considered by the Board of Directors at the Regular Meeting on March 21, 2013.
- F. During that meeting, several homeless providers and individuals testified against the removal of the homeless preferences for admission to the public housing program. (Our assumption was that they may have been misinformed about the public housing program and were testifying against removal of preferences for the section 8 program instead.)
- G. Subsequent to the Board meeting, the HPHA met with the State's Homeless Coordinator and several homeless providers/advocates for each side to have a better understanding of the pertinent issues surrounding this proposed action. Based on those discussions, the staff are resubmitting this proposed action for the Board's reconsideration.
- H. Staff has also prepared Attachment E, which outlines the comparison of the process for placing applicants with and without preferences. Staff is currently working on category 1 applications dated 2006, which consist of involuntary displaced, victims of domestic violence, and homeless. The timeline shows that due to continuous changes in applicant status, and to verify and re-verify qualification for preference, it takes staff approximately 3-8 weeks longer to place new applicants with preferences in place. This delay equates to loss of funding for those months that vouchers cannot be issued for, which cannot be recouped.
- I. Section 8 waitlist records indicate that of the over 2,300 families who are currently on the waitlist, about 350 eligible families who do not qualify for a category 1 preference have been on the waitlist for over 10 years, and 50 eligible families have been on the waitlist for over 20 years.
- J. Staff has confirmed that the City and County of Honolulu has a limited preference for homeless individuals that allows the City to use up to 5% of total budget authority for this preference, and to be eligible for the preference, the individual must be actively participating in and continue to participate in and meet the requirements of a HUD program for the homeless. Currently, HUD only has one program in Honolulu that would qualify an individual for this preference.
- K. Following approval of the Board, the staff will work with the Department of the Attorney General to incorporate any nonsubstantive revisions recommended by the Department of the Attorney General, and update all chapter numbers from Title 15 under the Department of Business Economic Development and Tourism to Title 17 under the Department of Human Services. All references to the Housing and Community Development Corporation of Hawaii and §201G, Hawaii Revised Statutes will be revised to the Hawaii Public Housing Authority and its authorizing

statute §356D, Hawaii Revised Statutes. All references to the federal regulations will be updated or revised to the correct federal citations.

- L. Following approval from the Governor to hold public hearings on the proposed amendments, the Executive Director will hold public hearings on the Islands of Kauai, Oahu, Maui, and Hawaii at a date and locations to be determined.
- M. Based on testimony received during the public viewing and comment period, the Executive Director will make any non-substantive amendments to the draft amendments to and compilation of the Rule prior to or following the public hearing.
- N. After the public hearings, the Executive Director will transmit amendments to and compilation of Chapter 15-185, HAR, as amended, to the Governor for final approval provided that no substantive amendments are made. Staff anticipates the following updated approximate schedule of the process:

<u>Action</u>	<u>Timeframe</u>
Board For Action (adopt amendments)	April 18, 2013
Receive AG approval	May 3, 2013
Request to Governor for public hearing	May 6, 2013
Receive Governor authorization	May 20, 2013
Publish hearing notice (30 day notice)	May 27, 2013
Public Hearing	June 27, 2013
Finalize Rule/Transmit to Governor for Adoption	July 5, 2013
Rule effective	July 22, 2013

### III. RECOMMENDATION

That the HPHA Board of Directors adopt amendments to and compilation of Chapter 15-185-25 "Section 8 - Housing Choice Voucher Program", Hawaii Administrative Rules, and adopt amendments to the Section 8 Housing Choice Voucher Program's Administrative Plan to Remove Waitlist Preferences, to Update all Chapter Numbers, and Update References to Applicable State Statutes and Federal Regulations, Subject to Review by the Department of the Attorney General; and to Authorize the Executive Director to Take All Actions Necessary Under Chapter 91, Hawaii Revised Statutes, and Administrative Directive No. 09-01, to Implement the Amendments, including Amending the Rules to Incorporate Revisions Recommended by the Department of the Attorney General

Attachment A: Sections 356D-4, and 356D-13, Hawaii Revised Statutes

Attachment B: February 25, 2013 Letter from Assistant Secretary Sandra Henriquez and HUD Notice PIH 2012-15

Attachment C: Chapter 15-185, Hawaii Administrative Rules (Ramseyer format)

Attachment D: Chapter 4-III.C, Section 8 Administrative Plan (Ramseyer format)

Attachment E: Housing Choice Voucher Placement Time: Timeline of Preference vs. No Preference application processing

Prepared by: Stephanie Fo, Acting Section 8 Branch Chief SK

Reviewed by Kiriko Oishi, Chief Compliance Officer KO

Approved by the Board of Directors  
on the date set forth above

\_\_\_\_\_  
David Gierlach  
Chairperson

## **Attachment A**

**The Hawaii Public Housing Authority's authorizing statutes allow the HPHA to adopt administrative rules with the force and effect of law to govern its federal programs.**

**[§356D-4] General powers of the authority.** (a) The authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and
- (4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs.

(b) In addition to other powers conferred upon it, the authority may do all things necessary and convenient to carry out the powers expressly provided in this chapter. [L 2006, c 180, pt of §2]

**[§356D-13] Administration of federal programs.** (a) The authority may carry out federal programs designated to be carried out by a public housing agency, or entity designated by the authority.

(b) The authority shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the authority and may be used to cover the administrative expenses of the authority. [L 2006, c 180, pt of §2]



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

February 25, 2013

Dear Executive Director:

**Subject: Corrected: 2013 Budget Update–Potential Sequestration Cuts - Housing Choice Voucher Program**

The purpose of this letter is to provide your agency with an update on the 2013 HCV Budget situation with regard to the possible funding cuts resulting from sequestration. It also provides guidance on actions your agency may wish to consider if you have not already done so given these potential cuts. HUD encourages you to share this letter with your Section 8 Housing Choice Voucher Director, your Chief Financial Officer, and your Board of Commissioners.

**Background:**

The Housing Choice Voucher Program is currently operating under a Continuing Resolution that expires on March 27, 2013. This means that the Housing Choice Voucher Program continues to be funded at last year's level until an Appropriations Act is passed or Congress takes other action. This year, HUD programs, including the Housing Choice Voucher Program, may also be subject to "sequestration" cuts. Sequestration refers to a series of automatic across-the-board cuts to domestic and defense programs outlined in the Budget Control Act of 2011. These cuts occur if Congress does not pass a deficit reduction package by March 1, 2013.<sup>1</sup>

**Potential Impact of Sequestration and Mitigation Strategies**

If sequestration occurs, there will be an immediate across-the-board cut to the HCV program funding from FY 2012 funding levels for the remainder of 2013. (Based on the projected renewal eligibility for 2013, this will result in a proration of approximately 94 percent of estimated renewal need.) Since these cuts could have a profound impact on your PHA's ability to serve families, the Department is encouraging PHAs to take measures to mitigate the potential impact of these funding cuts on the families that you serve. Given the nature of the program, some PHAs will be more at risk in being able to cope with funding reductions. Housing Authorities with low turnover rates, with increasing per unit cost trends and with low HAP reserves need to be particularly cautious. HUD is requesting that if you have not already done so, you take the following measures to ensure that your agency does not experience a funding shortfall and is able to continue to assist all HCV participants.

- (1) Utilization of the HCV Forecasting Tool: HUD has developed a HCV forecasting tool that is available on-line for PHA use.<sup>2</sup> The tool will assist you in mapping out various funding scenarios for your agency, with the ability to adjust for factors such as attrition and success rates. Please contact your local field office for any questions or technical assistance on using the tool.

<sup>1</sup> The American Taxpayer Relief Act, passed January 1, 2013, delayed the effective date of sequestration cuts to March 1, 2013.

<sup>2</sup> The utilization tool is found on the Office of Housing Voucher Programs webpage under "Related Program Information" at [www.hud.gov](http://www.hud.gov)



**Regardless of whether your agency uses the HCV utilization tool or its own forecasting process, it is critical that an analysis is done to determine whether your agency should be issuing vouchers to applicants at this time in light of these potential cuts.** In the past, certain PHAs have experienced funding shortfalls due to continued or increased leasing without the available budget authority to support the vouchers throughout the calendar year.

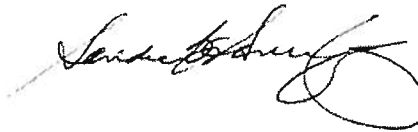
While it is possible that the sequestration cuts may be a temporary measure, it will be necessary during this uncertain budget climate to manage resources so as to minimize the effect of sequestration on existing HCV participants.

- (2) HUD encourages your agency to review PIH Notice 2011-28, which provides guidance on administrative flexibility and actions PHAs may take to reduce costs in the Housing Choice Voucher Program. Suggested actions listed in the Notice include lowering payment standards, reviewing utility allowances, changing portability and moves policies. Further, PHAs may wish to consider revising subsidy standards to reduce over-housed families, increasing minimum rents, and redoubling efforts to eliminate fraud and abuse. Early implementation of these measures may allow your PHA to better manage any prorations in its funding over the course of the calendar year.

Sequestration will also have a significant impact on Administrative Fee Funding to PHAs in 2013. The formula for sequestration cuts will result in an administrative fee proration of approximately 69 percent of fee eligibility. This deep proration, following the significant prorations of the past few years, could pose major challenges for PHAs in managing their HCV programs. PHAs should begin to make plans for this contingency if they have not done so already. PHAs are encouraged to review PIH Notice 2012-15, Streamlining Administrative Practices in the Housing Choice Voucher Program. PHAs are encouraged to refer to PIH Notice 2013-3, which provides options to PHAs in meeting certain program requirements during this period of decreased resources.

If you have any questions concerning this letter or how to use the HCV forecasting tool, please contact your local Field Office. If you believe that your agency might be at risk of being in a funding shortfall position as a result of these potential funding cuts or any other reason, please also contact your local Field Office.

Sincerely,



Sandra B. Henriquez  
Assistant Secretary  
Office of Public and Indian Housing



U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing

Special Attention of: Section 8 Public  
Housing Agencies; HUD Office of  
Public Housing Directors; Section 8  
Financial Management Center

Notice: PIH 2012-15 (HA)

Issued: February 27, 2012

Expires: This notice remains in effect until  
amended, superseded, or rescinded

---

**Subject: Streamlining Administrative Practices in the Housing Choice Voucher Program**

1. **Purpose.** This Notice provides guidance on actions public housing agencies (PHAs) administering the Housing Choice Voucher (HCV) program may take to streamline administrative practices and reduce administrative costs.
2. **Background.** The statutory authority for administrative fees is found in section 8(q) of the United States Housing Act of 1937. However, in recent years, the appropriations acts have specified the formula by which HUD must calculate how administrative fees are calculated. Since 2008, the appropriations acts have directed HUD to calculate administrative fees based on the formula in section 8(q) prior to enactment of the Quality Housing and Work Responsibility Act of 1998 (and related appropriations acts). This formula uses the higher of the 1993 or 1994 two-bedroom Fair Market Rent. PHAs were paid 7.65 percent of that rent for the first 600 units under lease and 7.5 percent for the remaining units. These per unit rates are adjusted annually by local wage rate data.

Since 2008, Congress has not appropriated 100 percent of funding eligibility under the formula. Based on the amount of funding for administrative fees in H.R. 2112, Consolidated and Further Continuing Appropriations Act, 2012, enacted on November 18, 2011, the Department is expecting the proration to be approximately 75 percent for fiscal year 2012. The reduction in administrative fees makes it necessary for many PHAs to streamline their business practices and look for ways to reduce costs. This Notice provides guidance that PHAs may wish to consider in order to reduce administrative burdens and administrative costs.

PHA administrative fees must only be used for HCV program expenses. These include but are not limited to: (1) waiting list management and updates; (2) preference verifications; (3) eligibility determinations; (4) intake and briefings; (5) voucher issuances; (6) owner outreach efforts; (7) unit inspections; (8) rent negotiations and reasonableness determinations; (9) annual and interim income reexaminations; (10) tenant fraud investigations and hearings; (11) processing subsequent moves, including

portability moves outside the PHA jurisdiction; (12) the costs associated with making housing assistance payments to owners; and (13) monthly reporting in HUD systems (VMS, PIC, FASS, SEMAP).

3. **PHA Actions to Reduce HCV Administrative Costs.** The following cost-saving measures are optional and have varying degrees of impact on each PHA. The PHA should consider the impact of each action prior to implementation. PHAs must continue to comply with all program requirements, regardless of whether the PHA is experiencing financial difficulties, and regardless of what cost savings measures are taken. This is not intended to be an exhaustive list of PHA cost savings actions.

- a. **Use of Upfront Income Verification (UIV) Tools.** UIV is the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals. The use of UIV tools can reduce the administrative time spent verifying income of participants because time-consuming third party verification methods can be avoided. UIV tools include but are not limited to the EIV System, the Work Number, and Advanced HR Solutions. PHAs should review Notice PIH 2010-19, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System, and further revisions or extensions for compliance with EIV requirements.
- b. **Verifying HQS Deficiencies Remotely for Annual or Interim Inspections.** If the PHA determines that a unit does not meet the Housing Quality Standards (HQS) requirements during an annual or interim inspection, verification that the deficiencies are corrected may be done by means other than a re-inspection. The regulation at 24 CFR 982.404(a)(3) states that the PHA must verify the correction of deficiencies but does not prescribe a particular method. For example, a PHA might accept an owner's certification, a receipt from a vendor, a photo of the repair or tenant confirmation that required repairs are complete and then verify that action at the next on-site inspection. Further, a PHA might tie the verification process to the severity of corrections needed and/or its experience with the owner and property. PHAs must include in the PHA's Administrative Plan how the PHA will verify the correction of HQS deficiencies.

In the case of initial inspections, the PHA is required to conduct an actual follow-up on-site inspection if the unit does not pass HQS pursuant to the initial inspection. Additionally, in the case of project based vouchers, the PHA is required to conduct follow-up inspections to determine if the HQS deficiency is corrected pursuant to 24 CFR 983.103(e)(2). Please refer to Notice PIH 2011-29 for additional information related to HQS inspections.

- c. **Separating the Annual HQS Inspection from the Annual Reexamination of Income.** Many PHAs time the annual HQS inspections to coincide with the tenant's annual reexamination of income. However, this is not a regulatory requirement and may not be the most efficient method of

completing annual HQS inspections. Separating these two functions may allow a PHA to schedule inspections based on geographic areas resulting in a more efficient use of staff time and a reduction in transportation costs.

PHAs should be aware that implementing this step would require the submission of an additional form HUD-50058, Family Report, into the PIC system. In accordance with Notice PIH 2010-25, Timely Reporting Requirements of the Family Report (form HUD-50058 and form HUD-50058 MTW), and any subsequent revisions, the Department has determined that reports must be submitted no later than 60 calendar days from the effective date of **any** action recorded on line 2b of the form HUD-50058 or form HUD-50058 MTW.

- d. **Eliminating Interim Reexaminations for Increases in Income.** PHAs may wish to consider the administrative costs of processing interim increases in income compared to the reduction in HAP expenses. Although many PHAs conduct interim reexaminations for increases in participant's income, the regulations do not require this action. The regulations at 24 CFR 982.516 require a PHA to develop policies prescribing when and under what conditions the family must report a change in family income or composition. Therefore, a PHA may adopt policies that do not require families to report increases in income until the next annual reexamination.

PHAs should consider the impact on the PHA's HAP expenses before implementing such a policy. For example, a PHA might conduct an analysis of the previous year's interim reexaminations to determine the effect on HAP expenses before the PHA takes any action.

Another alternative is to implement a policy where the PHA only requires the family to report an increase in income above a set threshold. This policy would decrease the number of interim reexaminations that the PHA must conduct. This approach creates a balance between the staff resources required to conduct the interim reexamination and the reduction in HAP expenses for the PHA. For example, a PHA could require an increase of at least \$5,000 in annual income before a family is required to report a change and the PHA conducts an interim reexamination.

PHAs are required to include in their Administrative Plan their policy on when an interim reexamination will be conducted. PHAs must conduct an interim reexamination if requested by the family due to a change in income or family composition.

- e. **Closing the Waiting List.** If a PHA has sufficient applicants on its waiting list to house families for a reasonable period of time based on past leasing rates, the PHA may close the waiting list to reduce the administrative tasks associated with accepting and processing applications. The PHA must comply with the requirements established in 24 CFR 982.206 for opening and closing the waiting list.

- f. **Eliminating Waiting List Preferences.** The establishment of local preferences for the selection of families admitted to the program is a PHA option. PHAs needing to reduce administrative burdens could elect to eliminate all local preferences and house families solely by the date and time of the application. This approach eliminates the staff time needed to verify the preferences and the on-going monitoring of the waiting list to ensure compliance with the preference system. The PHA would be required to amend the Administrative Plan to reflect the policy adopted.
- g. **Conducting Group Briefing Sessions.** The regulations at 24 CFR 982.301 outline the requirements of a PHA briefing for families selected to participate in the tenant-based program. The regulations do not prohibit a PHA from conducting these briefings in a group setting. Many PHAs follow this approach and it significantly reduces the amount of time PHA staff spends on the voucher briefing and issuance process.
- h. **Eliminating the Process of Screening Families for Tenant Suitability.** Screening families for suitability for tenancy is discretionary for PHAs as stated in 24 CFR 982.307. Owners are responsible for screening families on the basis of their tenancy history and may include factors such as: payment of rent and utility bills; caring for a unit and premises; respecting the rights of other residents to the peaceful enjoyment of their housing; drug related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and compliance with other essential conditions of tenancy. The PHA's Administrative Plan must state the policies on screening applicants for suitability.
- The PHA must comply with the requirements outlined in 24 CFR 982.553, Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers, when determining eligibility for an applicant or participant.
- i. **Absorbing Portability Vouchers.** In order to reduce the administrative task associated with portability billing arrangements, a PHA may absorb incoming portability families as long as they are financially able to do so. A receiving PHA cannot "absorb" a family into its HCV program until it executes a HAP contract on behalf of the family that moves to a new unit. PHAs may not engage in sham or fake portability paperwork exercises in an attempt to address their utilization or leasing problems. If the family is not placed under a HAP contract for a new unit in the receiving PHA's jurisdiction, the receiving PHA cannot absorb the family. PHAs should refer to Notice PIH 2011-3 for additional guidance on portability.
- j. **Limiting Portability and Moves within the PHA Jurisdiction.** The HCV program regulations at 24 CFR § 982.314(c) allow PHAs to adopt policies that prohibit moves during the initial lease term and prohibit more than one move by the family during any one year period. A PHA may only deny a move where the requested move is voluntary. A PHA must not deny moves for a unit that does not pass HQS or for a family requesting assistance under

the Violence Against Women Act (VAWA). PHAs should refer to Notice PIH 2011-3 for additional guidance on portability.

- k. **Streamlining the Reexamination Process.** PHAs should review their policies and procedures for conducting annual reexaminations of income to remove unnecessary steps. Removing unnecessary steps will reduce the amount of time spent on the annual reexamination process and allow staff to complete other responsibilities.
- The PHA should collect certain documents only at initial occupancy such as birth certificates and declarations of U.S. citizenship. However, HUD staff often sees multiple copies of these documents in tenant files because the PHA is collecting them unnecessarily at each annual reexamination.
  - Notice PIH 2010-19, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System, page 4, which is extended by Notice PIH 2011-25, provides updated information regarding written third party verification that can reduce the administrative burden of verifying income. The Notice clarifies that Written Third Party Verification, (Level 4), can be an original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or PHA request date and that such documentation may be in the possession of the tenant (or applicant). In the past, written third party verification had to come directly from the source and could not be in the tenant's possession. It is the Department's position that such tenant-provided documents are written third party verification since these documents originated from a third party source. The PHA may, at its discretion, reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

Examples of acceptable tenant-provided documentation (generated by a third party source) include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Current acceptable tenant-provided documents must be used for income and rent determinations. Please refer to Notice PIH 2010-19 for complete details.

- Notice PIH 2010-19, page 5, also makes an exception to obtaining third party verification for assets and expenses when: (1) the asset or expense to be verified is not a significant amount and would have minimum impact on the total tenant payment (TTP) **and** the PHA is able to verify the asset or expense through review of original documents provided by the tenant; or (2) an independent source does not have the capability of sending written third party verification directly to the PHA or does not facilitate oral third party verification; or (3) it is not cost effective or reasonable to obtain third party verification of assets and expenses.

6. 108

administrative repayment agreement. Reasonable and necessary costs include the costs of the investigation, legal fees and collection agency fees. If HUD incurs costs on behalf of the PHA in obtaining the judgment, these costs must be deducted from the amount to be retained by the PHA.

Since these funds must only be used to support the Section 8 program, they can provide added relief to an agency's administrative costs. Please refer to 24 CFR 792, Public Housing Agency and Section 8 Fraud Recoveries, for a full explanation of fraud recoveries.

5. **PHA Plan Requirements.** Any cost-savings measures referenced in this Notice that would result in a policy change that constitutes a significant amendment or modification as defined in 24 CFR 903.7(r)(2) are subject to the requirements of §§ 903.13, 903.15, 903.17, and 903.21, which include a public hearing and comment period. **However, not all cost-savings measures constitute a significant amendment; the PHA must make that determination based on the PHA's definition of significant amendment as provided in their PHA plan.**

6. **Further Information.** Any questions regarding this Notice should be directed to the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 708-0477 (this is not a toll-free number).

7. **Paperwork Reduction Act.** The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The information collection contained in this Notice has been approved under the PRA OMB Control Number 2577-0169.

/s/

Sandra B. Henriquez, Assistant Secretary for  
Public and Indian Housing



## Attachment C

### HAWAII ADMINISTRATIVE RULES

#### TITLE 15

#### DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

#### SUBTITLE 14

#### HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

#### CHAPTER 185

#### SECTION 8 - HOUSING CHOICE VOUCHER PROGRAM

##### SUBCHAPTER 1 General Provisions

\$15-185-1	Purpose
\$15-185-2	Nondiscrimination
\$15-185-3	Definitions
\$15-185-4	Public notice to lower-income families
\$15-185-5	Participation by owners and others
\$15-185-6	Income limits
\$15-185-7	Assets
\$15-185-8	Subsidy and occupancy standards
\$15-185-9	Allowance for utilities and other services
\$15-185-10	Verification of information

##### SUBCHAPTER 2 Eligibility

\$15-185-21	Applications
\$15-185-22	Eligibility for admission and participation
\$15-185-23	Income targeting
\$15-185-24	Notification of eligibility
\$15-185-25	Local preferences
\$15-185-26	Waiting list
\$15-185-27	Removal from the waiting list

§15-185-28 Closing and reopening the waiting list  
 §15-185-29 Final application process - selection  
 and certification  
 §15-185-30 Exception for designated programs  
 §15-185-31 Annual income  
 §15-185-32 Reexaminations  
 §15-185-33 Interim rent adjustment  
 §15-185-34 Continued assistance

#### SUBCHAPTER 3 Lease

§15-185-41 Request for lease approval  
 §15-185-42 Dwelling unit inspection  
 §15-185-43 Lease requirements  
 §15-185-44 Lease approval

#### SUBCHAPTER 4 Housing Assistance Payments and Rent

§15-185-51 Housing assistance payments  
 §15-185-52 Contract rents  
 §15-185-53 Total tenant payment  
 §15-185-54 Rent  
 §15-185-55 Payment standard  
 §15-185-56 Security deposits  
 §15-185-57 Ownership change

#### SUBCHAPTER 5 Operations

§15-185-61 Inspections  
 §15-185-62 Overcrowded or under occupied units  
 §15-185-63 Portability  
 §15-185-64 Transfers  
 §15-185-65 Eviction - termination of tenancy by  
 owner  
 §15-185-66 Termination of participation

SUBCHAPTER 6 Informal Reviews and Hearings

- \$15-185-71 Informal review process for applicants
- \$15-185-72 Informal hearing process for participants

SUBCHAPTER 7 Family Self-Sufficiency Program

- \$15-185-81 Family self-sufficiency program
- \$15-185-82 Eligibility
- \$15-185-83 Recruitment and outreach
- \$15-185-84 Selection
- \$15-185-85 Termination or withholding of service

SUBCHAPTER 8 Project-Based Section 8 Program

- \$15-185-91 Purpose
- \$15-185-92 Eligible projects
- \$15-185-93 Notification of project-based assistance
- \$15-185-94 Applications for project-based assistance; information required
- \$15-185-95 Preference
- \$15-185-96 Review and screening of applications
- \$15-185-97 Selection of project applications
- \$15-185-98 Agreement to enter into housing assistance contract
- \$15-185-99 Selection of eligible tenants

SUBCHAPTER 9 Miscellaneous Provisions

- \$15-185-201 Severability
- \$15-185-202 Number

Historical Note: Chapter 185 of Title 15, Hawaii Administrative Rules, is substantially based upon Chapter 17-511, Hawaii Administrative Rules. [Effective 2/18/82; am 10/31/88; R

DEC 03 2001 1

SUBCHAPTER 1

GENERAL PROVISIONS

§15-185-1 Purpose. These rules are adopted under chapter 91, HRS, and shall govern the implementation of the management requirements of the housing choice voucher program authorized by the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, and the Quality Housing Work Responsibility Act (QHWRA) of 1998, and establishes the role and responsibility of the participants and the housing and community development corporation of Hawaii. [Eff DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; C.F.R. §982.54)

§15-185-2 Nondiscrimination. (a) The corporation shall not deny any family or individual the opportunity to apply for or receive assistance under this chapter on the basis of race, color, sex, religion, marital status, creed, national or ethnic origin, age, familial status, handicap or disability or HIV infection.

(b) The corporation shall comply with federal and state nondiscrimination laws and with rules and regulations governing fair housing and equal opportunity in the administration of the program. The corporation shall provide a family with the United States Department of Housing and Urban Development discrimination complaint form and information on how to file a fair housing complaint if the family claims that discrimination prevented them from finding or leasing a suitable unit under the program. [Eff DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-5; 24 C.F.R. §§982.53, 982.304)

§15-185-3 Definitions. As used in this chapter:

"Adjusted income" means "annual income" minus any HUD allowable expenses and deductions as defined in 24 C.F.R. §5.611, which is incorporated by reference and attached as exhibit A.

"Annual income" means the gross amount of income anticipated to be received by the family during the twelve months after certification or recertification. Gross income is the amount of income prior to any HUD allowable expenses or deductions, and does not include income which has been excluded by HUD, as defined in 24 C.F.R. §5.609, which is incorporated by reference and attached as exhibit B.

"Applicant" means an individual or family that submits an application for admission to the program but is not yet a participant in the program.

"Assets" or "net family assets" means net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment as defined in 24 C.F.R. §5.603, which is incorporated by reference and attached as exhibit C.

"Board" means the board of directors of the housing and community development corporation of Hawaii.

"Certificate" means a document issued by the corporation to a family selected for admission to the certificate program.

"C.F.R." means the United States Code of Federal Regulations.

"Community wide" means inclusive of any location that is under the jurisdiction of the corporation.

"Continuously assisted" means that the applicant is currently receiving assistance under any program of the U.S. Housing Act of 1937, as amended, and there is no break in assistance to the family.

"Contract rent" means the total rent payable to the owner of a dwelling unit through a housing assistance payments contract.

"Corporation" means the housing and community development corporation of Hawaii, the successor to the Hawaii housing authority.

"Covered families" means families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance."

"Disabled family" means a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

"Domestic violence" means the actual or threatened physical violence directed against a family member by a spouse or other household member who lives in the unit with the family.

"Drug related criminal activity" means the manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance as defined in 21 U.S.C. 802 and which activity is conducted on or near the premises of the assisted dwelling unit.

"Dwelling unit" means a residential unit accepted for lease in the program.

"Economic self-sufficiency program" means any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families.

"Elderly" or "elderly family" means a family whose head, spouse, or sole member is a person who is at least sixty-two years of age; or two or more persons who are at least sixty-two years of age living together; or one or more persons who are at least sixty-two years of age living with one or more live-in aides.

"Eligible family" means a family that meets the qualifications and requirements of the program.

"Executive director" means the executive director of the corporation or the executive director's designated representative.

"Extremely low income family" means a family whose annual income does not exceed thirty per cent of the median income for the area, with adjustments for smaller and larger families, except that income ceilings higher or lower than thirty per cent of the median income for the area may be established if such variations are necessary because of unusually high or low family incomes.

"Fair market rent" or "FMR" means the rent including the cost of utilities (except telephone or cable television), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

"Family" means:

- (1) Two or more persons who live or intend to live together as a unit and whose income and resources are available to meet the family's needs and who may be related by blood, marriage, or operation of law and whose head of family has reached the age of majority. Family may include foster children and hanai children;
- (2) An elderly family;
- (3) A disabled family;
- (4) A displaced family;
- (5) The remaining member of a tenant family who is recorded as an authorized occupant on the current list of household members and who has reached the age of majority; or
- (6) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

"Family self sufficiency program" or "FSS program" means the program establish by the corporation in accordance with 24 C.F.R. Part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services.



"Gross rent" means the contract rent plus allowances for utilities and other services.

"Hanai children" means a person or persons, under eighteen years of age, for whom an applicant or participant provides food, nourishment and support for a minimum period of at least a year or has been recognized in the household for support by the Department of Human Services and who is acknowledged as the applicant's or participant's child among friends, relatives and the community.

"HAP" means the monthly housing assistance payment by the corporation as defined in 24 C.F.R. §982.4 which includes:

- (1) A payment to the owner for rent under the family's lease and
- (2) Any additional payment to the family if the total assistance payment exceeds the rent to the owner.

"HAP contract" means housing assistance payments contract.

"HRS" means Hawaii Revised Statutes.

"Housing quality standards" means the HUD minimum quality standards for housing assisted under the tenant-based programs.

"HUD" means the United States Department of Housing and Urban Development.

"Imputed welfare income" means the amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

"Involuntarily displaced" means an applicant who has vacated or may have to vacate the unit where the applicant lives because of one or more of the following:

- (1) Displacement by disaster;
- (2) Displacement by governmental action; or
- (3) Displacement by action of housing owner for reasons beyond the applicant's control and despite the applicant meeting all previously imposed conditions of occupancy. The action



- (4) taken by the owner is for reasons other than rent increase.

"Landlord" means either the owner of the property or his or her representative or the managing agent or his or her representative, as shall be designated by the owner.

"Live-in aide" means a person who resides with one or more elderly persons, or near elderly persons, or persons with disabilities, and who:

- (1) Is determined to be essential to the care and well-being of the persons;
- (2) Is not obligated for the support of the persons; and
- (3) Would not be living in the unit except to provide the necessary support services.

"Owner" means any persons or entity having the legal right to lease or sublease a residential dwelling unit to a participant and includes, when applicable, a mortgagee.

"Participant" or "tenant" means a person or family that is receiving rental assistance in the program. Participation begins on the first day of the approved lease term.

"Payment standard" means the maximum monthly assistance payment for a family assisted in the voucher program before deducting the total tenant payment by the family.

"Portability" means the right to receive Section 8 tenant-based assistance outside of the jurisdiction of the initial public housing agency.

"Program" means the tenant-based Section 8 rental certificate and voucher programs.

"Resident" means a United States citizen or a permanent United States resident who is able to demonstrate his or her intent to reside in Hawaii. Intent to reside in Hawaii shall be demonstrated by the following: length of time spent in Hawaii; leasing or renting of a home in Hawaii; filing of personal Hawaii income tax returns; registering to vote in Hawaii; Hawaii driver's license; record of Hawaii residency; enrollment of minor children in Hawaii schools; establishment of bank accounts and other

accounts in Hawaii; written reference from Hawaii residents, relatives, or social agencies; and any other indicia which could substantiate a claim of an intent to reside.

"Security deposit" means the deposit required by an owner from a participant as defined in the Residential Landlord-Tenant Code, §521-44, HRS.

"Utility allowance" means the value of utilities such as electricity, gas, and water costs that are included in the gross rent of the participant. This does not include telephone or cable TV services.

"Veteran" means a person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released from active service under conditions other than dishonorable.

"Violent criminal activity" means any illegal criminal activity that has one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

"Voucher" means a document issued by the corporation to a family selected for admission to the voucher program.

"Voucher holder" means an applicant who has a valid voucher, but not an approved lease.

[Eff **DEC 03 2001** ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. Parts 5 and 982)

§15-185-4 Public notice to lower-income families. The corporation shall inform the public of the availability and nature of housing assistance for families within allowed income limits through publications of general circulation and shall ensure wide and appropriate coverage.

[Eff **DEC 03 2001** ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.206)

§15-185-5 Participation by owners and others. The corporation shall invite eligible owners, including owners of suitable units located outside of

poverty or racially concentrated areas, to make dwelling units available for leasing by eligible families and to expand opportunities for disabled persons. [Eff DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§ 982.54) and 982.306)

§15-185-6 Income limits. (a) Income limits for a family's participation in the program shall be the same income limits established by HUD for its section 8 tenant-based housing choice voucher program, which are incorporated by reference and attached as exhibit D.

(b) Applicable income limits as provided in subsection (a) shall be published once per year in a publication with wide circulation, be posted at all times in a conspicuous place at the corporation's offices that accept applications, and printed in the corporation's informational materials on eligibility for the programs. [Eff DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §5.607)

§15-185-7 Assets. All assets held by each member of an eligible family shall be used to determine annual income. [Eff DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §5.609)

§15-185-8 Subsidy and occupancy standards. (a) The corporation shall establish subsidy standards that shall provide for a minimum commitment of subsidy while avoiding overcrowding. The subsidy standards are incorporated by reference and attached as exhibit E.

(b) The standards determine the number of bedrooms to be entered on the voucher and not a family's actual living arrangement.

(c) The corporation's occupancy standards follow the occupancy codes of the County in which the unit is located. The occupancy standards are incorporated by

reference and attached as exhibit F. [Eff  
DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS  
§201G-32; 24 C.F.R. §§982.54(d)(9), 982.401, 982.402)

§15-185-9 Allowance for utilities and other services. (a) The corporation shall maintain a utility allowance schedule for utilities and other services that shall be coordinated with the allowance schedules of the respective counties. The utility allowance schedules are incorporated by reference and attached as exhibit G.

(b) On request from a family that includes a person with disabilities, the corporation shall approve a utility allowance which is higher than the applicable amount in the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 C.F.R. part 8 to make the program accessible to and usable by the family member with a disability.

(c) A participant shall receive a utility reimbursement when the utility allowance exceeds the total tenant payment. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.517)

§15-185-10 Verification of information. (a) The corporation shall require an applicant or participant to provide documentation verifying information provided by the family relating to the program.

(b) An applicant or participant who fails to provide documentation to verify information requested by staff shall be ineligible for participation in the program.

(c) Verification documents shall be valid for the following lengths of time:

- (1) For applicants, sixty days before the voucher is issued to the applicant.
- (2) For participants, one hundred twenty days from the date received by the corporation.

[Eff **DEC 03 2001** ] (Auth: HRS §201G-15)  
(Imp: HRS §201G-15; 24 C.F.R. §§982.201,  
982.551; 982.552; 982.553)

## SUBCHAPTER 2

### ELIGIBILITY

**§15-185-21 Applications.** (a) A family seeking to participate in the program shall submit a completed pre-application form prepared by the corporation. The applicant is permitted to file an application in person or by mail and at any of the corporation's applications offices for any and all waiting list areas prescribed in section 15-185-26.

(b) The initial pre-application review shall not require an interview. Only applicants who are determined eligible in the initial review shall be placed on the waiting list. A final eligibility review shall be conducted when the applicant reaches the top of the waiting list.

(c) An applicant who has misrepresented material information may not be eligible to file an application with the corporation. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§982.201, 982.202)

**§15-185-22 Eligibility for admission and participation.** (a) To be eligible for participation in the program, an applicant and household members shall meet all of the requirements of the pre-application and final-application phases as set forth below:

- (1) During the pre-application phase, the applicant and adult household members shall:
  - (A) Qualify as a family;
  - (B) Be income eligible as determined under section 15-185-6;

- (C) Not have an outstanding debt owed to the corporation as a participant in any of its programs;
- (D) Not have an outstanding liability for unpaid rent or damages incurred while previously participating in any section 8 rental subsidy program;
- (E) Provide a social security number for all family members who are at least six years of age or certify that the person does not have a social security number;
- (F) Not have been evicted since March 1, 1985 from a public housing program administered by the corporation or its predecessor, Hawaii housing authority;
- (G) Not have been terminated for assistance under the program;
- (H) Not have committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- (I) Within one year of the projected date of voucher award, not have been engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, right of peaceful enjoyment of the premises by other residents, the owner, or corporation employees;
- (J) Not be illegally using a controlled substance or give the corporation a reasonable cause to believe that the illegal use (or pattern of illegal use) of a controlled substance or abuse of alcohol (or pattern of abuse) may interfere with the health, safety, or right to peaceful enjoyment of a rental premises by other residents;
  - (i) For the purposes of this subsection, "reasonable cause to



- believe" means by a preponderance of the evidence;
- (ii) For the purposes of this subsection, in determining whether to deny eligibility based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol, the corporation may consider rehabilitation as provided for under 42 U.S.C. §13661(b)(2)(A)-(C) effective October 1, 1999, which is incorporated by reference and attached as exhibit H;
  - (K) Not be engaged in any drug-related criminal activity or violent criminal activity which would adversely affect the health, safety, right to peaceful enjoyment of the premises by other residents, the owner, or corporation employees;
  - (L) Not have been convicted of the manufacture, production, or distribution of methamphetamines; and
  - (M) Not subject to lifetime registration requirements under any State sex offender's registration program.
- (2) During the final application phase the applicant and all adult household members shall meet the requirements set forth in subsection 15-185-22(a)(1), as well as the following requirements:
- (A) Not engaged in or threatened abusive or violent behavior toward the corporation's personnel. For purposes of this subsection, "threatened" means an oral or written threat or physical gestures that communicate an intent to abuse or commit violence. Abusive or violent behavior may be verbal or physical and include use of expletives that are generally considered

insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate; and

- (B) Furnish evidence of citizenship or eligible immigrant status as provided for in 24 C.F.R. §5.508, which is incorporated by reference and attached as exhibit I.

(b) An applicant who is continuously assisted under the U.S. Housing Act of 1937 shall be admitted to the program as though the applicant was already a program participant.

(c) A participant shall not receive a voucher at the same time as other rent supplement or housing benefits including state rent supplement payments authorized under chapter 201G-236, Hawaii Revised Statutes.

(d) Before the corporation denies or terminates assistance on the basis of a criminal record, the corporation shall provide the applicant or participant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record pursuant to section 15-185-71 or 15-185-72.

[Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§5.216, 982.201, 982.202, 982.307, 982.551, 982.552, 982.553)

§15-185-23 Income targeting. At least seventy five per cent of families admitted to the program during the fiscal year from the waiting list shall be extremely low income families. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.201)

§15-185-24 Notification of eligibility. (a) An applicant shall be mailed a written notification after an eligibility determination is made. The notification shall specifically state the reasons for the determination.



(b) An eligible applicant shall be placed on the waiting list.

(c) An applicant determined to be ineligible for admission or participation in the program shall be accorded an opportunity to request for an informal review as set forth in section 15-185-71. [Eff

DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.554)

§15-185-25 Local preferences. (a) Eligible applicants shall be given preference for certification in the program in the order of the dates of their applications if, at the time they are seeking housing assistance, they fall within the following preference categories:

- (1) The following preferences shall be given first priority but have equal weight within this group:
  - (A) Involuntarily displaced;
  - (B) Victims of domestic violence; or
  - (C) Homeless.
- (2) The following preferences shall be given second priority but have equal weight within this group:
  - (A) Living in substandard housing; or
  - (B) Paying more than fifty per cent of annual income for rent.
- (3) The following are other preferences that have equal weight:
  - (A) Working families and those unable to work because of age or disability;
  - (B) Veterans and veterans' surviving spouse;
  - (C) Residents who live or work in the jurisdiction (by county); or
  - (D) Victims of reprisals or hate crimes.

(b) Each preference in each priority group is of equal weight and an applicant who qualifies for any of the preferences shall receive assistance before any other applicant who is not so qualified regardless of:

- (1) Place on the waiting list; or

(2) Date or time of submission of an application.

(c) An applicant who is an elderly, disabled or displaced family with up to two members in the household shall be given preference over all other single applicants, regardless of the other single applicant's local preference.

(d) An applicant shall not receive preference if any adult member of the applicant family is a person who was evicted or terminated from any housing program operated by the corporation during the past three years because of drug-related criminal activities unless the adult member has successfully completed a rehabilitation program approved by the corporation.] [Eff DEC 03 200 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§5.405, 5.410, 5.415, 5.420, 5.425, 5.430, and 982.207)

§15-185-26 Waiting list. (a) The corporation shall maintain separate waiting lists for each of the islands of Oahu, Kauai, Maui, Molokai and Lanai, and for the west Hawaii-north Kohala district to south Kona district and the east Hawaii-Ka'u district to the Hamakua district, which is community wide in scope.

(b) Applicants shall be notified of the opportunity to apply for and be placed on any and all waiting lists through notices posted in a conspicuous place at the corporation's offices that accept applications and in a printed statement in the corporation's information material on its application process.

(c) Placement of applicants on the waiting list shall be based upon the following:

(1) Applicable local preference; and

(2) Date and time of application's receipt.

(d) An applicant must notify the corporation, at least annually, of any change that may affect the applicant's place on the waiting list and the corporation's ability to contact applicant. Changes include, but are not limited to, familial status,

financial status, [preference status,] mailing address and current residence.

(e) An applicant may continue to be on the waiting list even though the applicant is a tenant in or receiving housing assistance from another housing program. (Eff DEC 03 2001 (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.204))

§15-185-27 Removal from the waiting list. An applicant shall be removed from the waiting list for any one of the following reasons:

- (1) The applicant requests that applicant's name be removed;
- (2) The applicant fails to notify the corporation of applicant's continued interest for housing at least once every twelve months;
- (3) The applicant no longer meets the eligibility criteria set forth in section 15-185-22;
- (4) The applicant fails to respond to the corporation's reasonable contact efforts. Two written notices to the last known address shall constitute reasonable effort to contact;
- (5) The applicant fails without good cause to keep a scheduled interview or to provide requested information necessary to determine eligibility;
- (6) The applicant refuses a voucher for housing assistance; or
- (7) The applicant misrepresents any material information to the corporation on the application or otherwise. (Eff DEC 03 2001 (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.204(c)))

§15-185-28 Closing and reopening the waiting list. (a) The corporation may suspend the acceptance of applications and close the waiting list, in whole

or in part, when it is determined that there are enough applicants on the waiting list to fill anticipated openings for the next twenty-four months.

(b) The corporation may publicly announce any closure and reopening of the application taking process pursuant to section 15-185-4. If the list is opened for only a limited time, the opening announcement shall include the closing date and not require further notice. Publicly announce may include, but is not limited to, publishing notices in a newspaper of general circulation and minority newspapers or notifying social service organizations.

(c) During periods when the waiting list is closed, the corporation is not required to maintain a list of persons to be notified when application taking is reopened. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.206)

§15-185-29 Final application process - selection and certification. (a) Selection for certification shall be from the established waiting list and shall be based on the following:

(1) Applicable local preferences; and

(2) Date and time of receipt of application.

(b) Applicants shall be provided with a briefing packet containing all required materials and shall be informed of their responsibilities prior to acceptance of a voucher. A voucher shall not be issued unless the applicant or an authorized representative attends a briefing and signs the voucher.

(c) A voucher holder shall be responsible for finding a qualified dwelling unit of appropriate size prior to the expiration of the voucher.

(d) A voucher shall expire at the end of sixty days from issuance unless within that timeframe, the family submits a request for lease approval, in which case the sixty day time limit shall be suspended while the corporation determines whether to approve the lease.

(e) An applicant may request an extension to the initial sixty day time period if the voucher is about



to expire. The request for extension shall be in writing and be received by the corporation or postmarked no later than the last day of the voucher term. The extension request shall include an explanation for the request and a progress report on efforts made to locate a suitable unit.

(f) An applicant may request an extension beyond one hundred twenty days provided there are verifiable circumstances beyond the applicant's control that hinders the applicant from locating a suitable unit. The request for extension shall be in writing and be received by the corporation or postmarked no later than the last day of the voucher term. The extension request shall include an explanation for the request and a progress report on efforts made to locate a suitable unit. If an extension is granted, the corporation shall recertify the applicant's eligibility and income.

(g) Upon request from a prospective landlord, the corporation may furnish the current address and the name and address of any current or prior landlord of the voucher holder as shown in the corporation's records. Also upon request from the prospective landlord, the corporation may furnish other information about the tenancy history of family members, or (provided that there has been a criminal conviction) about drug trafficking by family members. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§ 982.301, 982.302, 982.303, 982.305, 982.306, 982.307)

§15-185-30 Exception for designated programs.

(a) The corporation may admit families not on the established waiting list that are targeted for specific funding awards from HUD, including, but not limited to:

- (1) A family displaced because of modernization, demolition or disposition of a public or Indian housing project;

- (2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;
  - (3) Housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990;
  - (4) A family residing in a project covered by a section 8 project-based housing assistance payment contract at or near the end of the housing assistance payment contract term; or
  - (5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project; or
  - (6) A family that resides or will reside in a unit covered by a project-based section 8 housing assistance payment contract.
- (b) The corporation shall admit families on the established waiting list who qualify for special funding awards from HUD including, but not limited to:
- (1) The Mainstream Housing Opportunities for Persons with Disabilities program and
  - (2) The Welfare-to-Work or similar self-sufficiency programs.
- (c) This section shall also apply to a family displaced because of demolition or disposition of a corporation owned housing project that is not federally assisted.
- (d) A family may be admitted under this section without qualifying for any preferences, or without being on the program waiting list. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.203)

§15-185-31 Annual income. The corporation shall determine each applicant's and participant's annual income pursuant to 24 C.F.R. §5.609, which is incorporated by reference and attached as exhibit B. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. § 5.609)

§15-185-32 Reexaminations. (a) At least once every twelve months, the corporation may reexamine a family's income, composition and any other matter necessary to determine the participant's rent and eligibility for continued housing assistance.

(b) If at the time of admission or reexamination, a family's income cannot be reasonably anticipated for the next twelve-month period, the corporation may schedule a special reexamination at any time prior to the next annual reexamination when deemed necessary.

(c) The participant and owner shall be notified in writing by the corporation of the results of any reexamination within a reasonable time. [Eff

DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§5.617, 982.516)

§15-185-33 Interim rent adjustment. (a) The corporation may adjust a participant's rent between reexaminations if a participant reports a change in income.

(b) Adjustments reflecting a lower rent shall be made effective on the first day of the month following the month the report was made. A participant who has obtained a decrease in rent under this section, shall report all income increases which occur prior to the next reexamination and rent may be readjusted accordingly.

(c) A rent adjustment shall be made between reexaminations when a participant's income increases as a result of the inclusion of additional persons with income to the family, and such adjustment shall be made effective on the first day of the second month following the inclusion.

(d) The participant and owner shall be notified in writing by the corporation of the results of any reexamination within a reasonable time. [Eff

DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.516)

§15-185-34 Continued assistance. (a) When one family splits into two eligible families, both families wish to continue assistance, and there is no court order, the corporation shall decide to continue assistance to one family instead of the other if that family:

- (1) Retains the children or includes any disabled or elderly members. Children subject to a joint custody agreement but live with one parent for a cumulative period of at least one hundred eighty three days of the year shall be considered a member of that household;
- (2) Includes the family member that applied as head of household;
- (3) Includes the responsible party for domestic violence which caused the split of the family;
- (4) Is subject to other factors specified by the corporation;
- (5) Is recommended by social service agencies or qualified professionals to retain assistance. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.315)

### SUBCHAPTER 3

#### LEASE

§15-185-41 Request for lease approval. Upon finding a dwelling unit that an owner is willing to lease, the family shall submit a request to have the lease approved by the corporation. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.305)

§15-185-42 Dwelling unit inspection. (a) Prior to approving a lease, the corporation shall inspect



the dwelling unit within a reasonable time after receipt of the owner's inspection request.

(b) Dwelling units approved for lease in the program shall meet minimum housing quality standards. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§982.305, 982.401)

§15-185-43 Lease requirements. (a) The corporation shall review the lease, particularly noting compliance with HUD regulations and state and local law. The participant also must have legal capacity to enter a lease under state and local law.

(b) The family and owner must submit a standard form lease used in the locality and that is generally used for other unassisted tenants in the premises by the owner. The terms and conditions of the lease must be consistent with state and local law. The lease must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family. The HUD prescribed tenancy addendum must be included in the lease word-for-word before the lease is executed. The HUD tenancy addendum is incorporated by reference and attached as exhibit J. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.308)

§15-185-44 Lease approval. (a) If the corporation determines that a dwelling unit is suitable for the program and the lease meets the requirements of the program, the owner and family shall be notified, and a contract executed.

(b) The initial lease shall be for at least one year.

(c) If the corporation determines that a lease cannot be approved for any reason, the owner and family shall be notified in writing. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§982.308(b), 982.309(b)(1))

SUBCHAPTER 4

HOUSING ASSISTANCE PAYMENTS AND RENT

§15-185-51 Housing assistance payments. The corporation shall make housing assistance payments to the owner on behalf of an eligible family. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.311)

§15-185-52 Contract rents. (a) The contract rent for a dwelling unit in the program shall be determined on a case-by-case basis. The approved rent shall be reasonable in comparison to rent for other comparable unassisted units in the housing market.

(b) Contract rents may be adjusted at each annual anniversary date of the HAP contract at the request of the owner. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.507)

§15-185-53 Total tenant payment. (a) The corporation shall compute the total tenant payment.

(b) There shall be an established minimum rent of \$25.00 per month. Exception to the application of the minimum monthly rental amount shall apply if the family is unable to pay because of financial hardship which is determined pursuant to 24 C.F.R. §5.630

(2000) and includes the following situations:

- (1) The family has lost eligibility or is awaiting an eligibility determination for federal, state, or local assistance;
- (2) The family would be evicted as a result of the imposition of the minimum rent requirement;
- (3) The income of the family has decreased because of changed circumstances, including:
  - (A) Loss of employment;
  - (B) An income producing family member dies;and

- (C) Other circumstances beyond the family's control as determined by the corporation. [Eff DEC 03 2001 ]  
(Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§5.630, 982.518)

§15-185-54 Rent. (a) Certificate rents shall not exceed the fair market rent as determined by the corporation which may or may not be guided by the fair market rent published annually by HUD except to provide reasonable accommodation for a family that includes a person with disabilities. On request from the family that includes a person with disabilities, the corporation shall approve an exception rent of up to one hundred twenty per cent of the fair market rent if the exception rent is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 C.F.R. Part 8 (2000).

(b) Voucher rents are based on the payment standard as set by the corporation.

(c) The fair market rent, which includes utilities and is established for dwelling units of various bedroom sizes, is incorporated by reference and attached as exhibit K. [Eff DEC 03 2001 ]  
(Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§888.111, 982.504, 982.507)

§15-185-55 Payment standard. (a) The maximum monthly subsidy payment for a family before deducting the family contribution is set by the corporation between ninety per cent and one hundred ten per cent of the HUD determined fair market rent. The corporation may establish a payment standard amount that is higher or lower than the basic range subject to HUD approval.

(b) The corporation may approve a higher payment standard within the basic range to reasonably accommodate a family that includes a person with disabilities. [Eff **DEC 03 2001** ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §982.503)

§15-185-56 Security deposits. (a) The participant shall be responsible for the payment of a security and utility deposit.

(b) The corporation shall not be responsible for the payment of security and utility deposits. [Eff **DEC 03 2001** ] (Auth: HRS §§201G-15 and 521) (Imp: HRS §201G-15; 24 C.F.R. §982.313)

§15-185-57 Ownership change. (a) A change in ownership of a dwelling unit under a HAP contract does not require execution of a new contract or lease. The corporation may approve the assignment of the HAP contract at the previous owner's request.

(b) The owner who is selling the dwelling unit shall provide written notice to the corporation at least thirty days prior to the sale closing.

(c) The new owner shall provide documents to verify the sale and other information requested by the corporation.

(d) Housing assistance payments to the owner who is selling the dwelling unit shall be suspended effective the first of the month following the receipt of the notification of the sale of the dwelling unit and when the assignment of the HAP contract to the new owner is approved by the corporation. [Eff **DEC 03 2001** ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§982.305, 982.306)

## SUBCHAPTER 5

### OPERATIONS

\$15-185-61 Inspections. (a) The corporation shall annually inspect each dwelling unit leased to a participant of the program.

(b) The corporation may conduct special inspections upon notification by the participant or owner that the unit does not meet housing quality standards or based on information from third parties such as neighbors or public officials.

[Eff **DEC 03 2001** ] (Auth: HRS \$201G-15) (Imp: HRS \$201G-15; 24 C.F.R. \$982.405(a))

\$15-185-62 Overcrowded or under occupied units. A participant shall be issued a new voucher if the corporation determines that the dwelling unit does not meet the corporation's subsidy standards for occupancy. [Eff **DEC 03 2001** ] (Auth: HRS \$201G-15) (Imp: HRS \$201G-15; 24 C.F.R. \$982.403)

\$15-185-63 Portability. (a) The corporation may require applicants who were nonresidents at the time of application to live in its jurisdiction during the first twelve-month period.

(b) The corporation shall not absorb a family under portability assistance into its program unless funds are available and there is no applicant with a preference on the applicable waiting list.

[Eff **DEC 03 2001** ] (Auth: HRS \$201G-15) (Imp: HRS \$201G-15; 24 C.F.R. \$982.354, 982.355)

\$15-185-64 Transfers. (a) A family may terminate its lease with the landlord at any time after the first twelve months as provided by the rental agreement with the landlord and shall provide a copy of the notice to the corporation.

(b) The corporation shall deny permission to move if:

- (1) There are insufficient program funds for continued assistance;

- (2) The participant has violated a family obligation listed on the certificate of family participation or voucher;
- (3) The participant owes the corporation money; or
- (4) The participant has moved or has been issued a voucher within the last twelve months.  
[Eff **DEC 03 2001** ] (Auth: HRS §201G-15)  
(Imp: HRS §201G-15; 24 C.F.R. §§982.314, 982.552)

§15-185-65 Eviction - termination of tenancy by owner. (a) If the owner wishes to terminate the lease, the owner is required to provide proper notice as provided in the lease and the Hawaii Residential Landlord-Tenant Code.

(b) During the term of the lease the owner may only evict for:

- (1) Serious or repeated violations of the lease, including but not limited to failure to pay rent or other amounts due under the lease, or repeated violation of the terms and conditions of the lease;
- (2) Violations of federal, state or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises;
- (3) Criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control that threatens the health, safety or right to peaceful enjoyment of the premises by the other residents, or persons residing in the immediate vicinity of the premises or any drug-related criminal activity on or near the premises;
- (4) Failure to comply with all obligations, restrictions, rules and the like which are in accordance with section 521-52, Hawaii Revised Statutes, and which the landlord can demonstrate are reasonably necessary for the



preservation of the property or protection of the persons of the landlord, other tenants, or any other person; or

(5) Other good cause.

(c) During the initial term of the lease, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do.

(d) The owner shall provide the tenant a written notice specifying the grounds for termination of tenancy pursuant to chapter 521, Hawaii Revised Statutes, before the commencement of the eviction action. The notice may be included in, or may be combined with, any owner eviction notice to the tenant. The owner eviction notice means a notice to vacate, or a complaint, or other initial pleading used under State or local law to commence an eviction action.

(e) Housing assistance payments are paid to the owner under the terms of the HAP contract. If the owner has begun eviction and the family continues to reside in the unit, the corporation shall continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The corporation may continue housing assistance payments until the family moves or is evicted from the unit. If the action is finalized in court, the owner must provide the corporation with the documentation, including notice of the date of physical eviction.

(f) The corporation shall continue making housing assistance payments to the owner in accordance with the contract as long as the tenant continues to occupy the unit in accordance with the terms of the lease. By endorsing the monthly check from the corporation, the owner certifies that the tenant is still in the unit, and that the rent is reasonable and is in compliance with the contract.

(g) If an eviction is not due to a serious or repeated violation of the lease, and if the corporation has no other grounds for termination of assistance, the corporation may issue a new

certificate or voucher so that the family can move with continued assistance. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§982.310, 982.455)

§15-185-66 Termination of participation. (a)

The corporation shall terminate a family's participation in the program when:

- (1) The family has been evicted from housing assistance under the program for serious violation of the lease;
- (2) Any member of the family fails to sign and submit consent forms for obtaining information in accordance with the program; or
- (3) The family does not submit required evidence of citizenship or eligible immigration status.

(b) The corporation may terminate a family's participation in the program when:

- (1) The family fails to fulfill their obligations under the program;
- (2) Any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- (3) The family is under contract and one hundred and eighty days have elapsed since the last housing assistance payment was made;
- (4) The family has not reimbursed any public housing agency for amounts paid to an owner under a HAP contract on behalf of the family for rent, damages to the unit, or other amounts owed by the family under the lease;
- (5) The family breaches an agreement with the corporation to pay amounts owed to the corporation, or amounts paid to an owner by the corporation;
- (6) Any member of the family has engaged in or threatened abusive or violent behavior toward the corporation's personnel.



Threatened means an oral or written threat or physical gestures that communicate an intent to abuse or commit violence. Abusive or violent behavior may be verbal or physical and include use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate;

- (7) Any member of the family has engaged in any drug-related criminal activity or violent criminal activity. For the purpose of this subsection, "violent criminal activity" means any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another;
- (8) Any member of the family is illegally using a controlled substance or whose illegal use or pattern of abuse of a controlled substance, or whose abuse of alcohol or pattern of abuse of alcohol is determined by the corporation to interfere with the health, safety, or right to peaceful enjoyment of a rental premises by other residents. In determining whether to terminate assistance based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, the corporation may consider rehabilitation as provided for under 42 U.S.C. §13661(b)(2)(A)-(C) effective October 1, 1999, which is incorporated by reference and attached as exhibit I;
- (9) A family participating in the family self-sufficiency program fails to comply, without good cause, with the family's family self-sufficiency contract of participation; or
- (10) Welfare-to-work family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

(c) A participant found to be ineligible for continued participation in the program shall be notified in writing by the corporation and be accorded an opportunity to request an informal hearing as set forth in these rules. Such notice shall state the reasons for the corporation's determination and that the participant has the opportunity to request an informal hearing. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§982.551, 982.552, 982.553)

## SUBCHAPTER 6

### INFORMAL REVIEWS

\$15-185-71 Informal review process for applicants. (a) An applicant who has been denied assistance by the corporation shall have an opportunity for an informal review pursuant to 24 C.F.R. §982.554 (2000).

(b) The applicant shall provide the corporation with a request for an informal review within fifteen days from the date of the corporation's notification of denial of assistance.

(c) The informal review shall be scheduled within fifteen days from the date the written request is received by the corporation and shall be conducted by any person or persons designated by the corporation, but shall not be a person who made or approved the decision under review or a subordinate of this person.

(d) The applicant shall be given the opportunity to present oral or written objections to the corporation's denial of assistance. Both the corporation and the applicant may present evidence and witnesses. The applicant may be assisted by an attorney or other representative at his or her own expense.

(e) The informal review may be conducted by mail or telephone if acceptable to both parties.

(f) A written notice of the review of findings shall be provided to the applicant within thirty days after the review. The notice shall include the decision of the hearing officer and an explanation of the reasons for decision.

(g) An applicant who is denied assistance for citizen or immigrant status shall have an opportunity for an informal hearing pursuant to 24 C.F.R. 5.514 (2000). [Eff DEC 03 2001 ] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§982.54(d)(12), 982.554)

\$15-185-72 Informal hearing process for participants. (a) The corporation shall give a participant an opportunity for an informal hearing to consider whether the following corporation decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and corporation rules pursuant to:

- (1) A determination of the family's annual or adjusted income and the use of such income to compute the housing assistance payment;
- (2) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the corporation's utility allowance schedule;
- (3) A determination of the family unit size under the corporation's subsidy standards;
- (4) A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the corporation's subsidy standards, or the corporation's determination to deny the family's request for an exception from the standards;
- (5) A determination to terminate assistance for a participant family because of the family's action or failure to act;
- (6) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer

- than the maximum period permitted; or
- (7) A determination to terminate a family's family self-sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account.
- (b) The opportunity for informal hearing shall be provided to participants prior to the termination of assistance.
- (c) The participant shall provide the corporation with a request for an informal hearing within fifteen days of the corporation's notification of determination.
- (d) The informal hearing shall be scheduled within fifteen days from the date the written request is received and shall be conducted by any person or persons designated by the corporation, but shall not be a person who made or approved the decision under review or a subordinate of this person.
- (e) Prior to the informal hearing:
- (1) The participant shall be given the opportunity to examine any corporation documents that are directly relevant to the hearing. The participant may copy any relevant document at the participant's expense.
- (2) The corporation shall be given the opportunity to examine any family documents that are directly relevant to the hearing. The corporation may copy any relevant document at the corporation's expense.
- (f) The participant and the corporation shall be given the opportunity to present evidence and may question witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- (g) The participant may be assisted by an attorney or other representative at the participant's expense.
- (h) A written notice of the findings of the hearing officer shall be provided to the corporation and participant within ten days upon conclusion of the informal hearing. The notice shall include:

- (1) A summary of the decision and reasons for the decision;
- (2) The amount owed and documentation of the calculation of monies owed and
- (3) The effective date of the decision.
- (i) The corporation shall not be bound by the decision of the hearing officer that:
  - (1) Concerns matters in which the corporation is not required to provide an opportunity for a hearing or that otherwise exceeds the authority of the hearing; or
  - (2) Is contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.
  - (3) If the corporation determines that it is not bound by a decision of the hearing officer, the corporation shall send a letter to the participant within thirty days of its determination. The letter shall state the reasons for the determination.
- (j) A participant who is determined to be ineligible for assistance due to citizen or immigration status shall have an opportunity for an informal hearing pursuant to 24 C.F.R. §5.514.  
 [Eff DEC 03 2001] (Auth: HRS §§91, 201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§5.514, 982.54(d)(13), 982.555)

## SUBCHAPTER 7

### FAMILY SELF-SUFFICIENCY PROGRAM

#### §15-185-81 Family self-sufficiency program.

The objective of the corporation's family self-sufficiency ("FSS") program is to reduce the dependency of low-income families on welfare assistance and to reduce Section 8, public housing, or any federal, state, and local rent or homeownership subsidies. Under the family self-sufficiency program, low-income families are provided opportunities for

education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. Part 984)

§15-185-82 Eligibility. (a) Participants in the corporation's Section 8 tenant-based and federal public housing programs are eligible to participate in the family self-sufficiency program.

(b) Preference shall be given to applicants who already receive family self-sufficiency-related support services for fifty per cent or less of the allocations. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. Part 984)

§15-185-83 Recruitment and outreach. (a) The corporation shall conduct outreach programs to recruit family self-sufficiency participants.

(b) Outreach efforts may include the following:

- (1) Sending informational brochures to each family participating in the corporation's Section 8 and federal public housing programs;
- (2) Conducting orientation sessions for families who express an interest in participating in the family self-sufficiency program; and
- (3) Identifying and targeting potential families in the corporation's caseloads.

[Eff DEC 03 2001] (Auth: HRS §201G-15)  
(Imp: HRS §201G-15; 24 C.F.R. Part 984)

§15-185-84 Selection. (a) Families shall be selected without regard to race, color, religion, sex, handicap, familial status, or national origin.

(b) Families may be selected by date of receipt of application.



(c) In the event there are more applicants than family self-sufficiency allocations, the corporation shall conduct a lottery to determine placement on the waiting list.

(d) Initially, up to one hundred thirty-six section 8 participants shall be selected to participate in the family self-sufficiency program.

[Eff: **DEC 03 2001** (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. Part 984)]

§15-185-85 Termination or withholding services.

(a) The corporation shall monitor and assess the family self-sufficiency participant's progress and compliance with the goals set forth in the contract of participation. When the corporation determines that the family self-sufficiency participant is not making progress or complying with the goals set forth in the contract of participation, the corporation shall notify the family self-sufficiency participant of such determination and provide the family self-sufficiency participant six months to demonstrate compliance with the plan of the contract of participation.

(b) If no progress has been made or the family self-sufficiency participant is still not complying with the contract of participation after the six-month period, the corporation shall provide the family self-sufficiency participant with a written notice of intent to terminate or withhold services and of the opportunity to request an informal hearing. [Eff: **DEC 03 2001** (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. Part 984)]

SUBCHAPTER 8

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

§15-185-91 Purpose. The purpose of this subchapter is to establish a procedure for the selection of units to which the corporation may attach

section 8 voucher assistance. [Eff DEC 03 2001 ]  
(Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R.  
Part 983)

§15-185-92 Eligible projects. (a) The corporation may attach section 8 voucher assistance to units in newly constructed and existing structures of various types including single-family housing and multifamily structures.

(b) The corporation may not attach section 8 voucher assistance to units in the following types of housing:

- (1) Owner occupied units; however, cooperatives are considered to be rental housing for purposes of this subchapter;
- (2) Mobile or manufactured homes;
- (3) Shared housing, nursing homes, and facilities providing continual psychiatric, medical, nursing services, board and care or intermediate care;
- (4) Except for existing units, housing for which the construction or rehabilitation has started prior to execution of an agreement with the corporation;
- (5) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions;
- (6) Housing located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program;
- (7) Housing located in the coastal barrier resources system designated under the Coastal Barrier Resources Act;
- (8) College or other school dormitories;
- (9) Units subsidized under other federal housing programs including:
  - (i) Public housing;



- (ii) A unit subsidized by any other form of section 8 assistance;
- (iii) A unit subsidized with any local or state rent subsidy;
- (iv) A section 236 project or a unit subsidized with section 236 rental assistance payments;
- (v) A Rural Development Administration section 515 project;
- (vi) A unit subsidized with rental assistance payments under section 521 of the Housing Act of 1949 (a Rural Development Administration Program);
- (vii) Housing assisted under former section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- (viii) A section 221(d)(3) project;
- (ix) A project with a section 202 loan;
- (x) A section 202 project for non-elderly persons with disabilities;
- (xi) Section 202 supportive housing for the elderly;
- (xii) Section 811 supportive housing for persons with disabilities;
- (xiii) A section 101 rent supplement project;
- (xiv) A unit subsidized with tenant-based assistance under the HOME program, or any unit with any other duplicative federal, state, or local housing subsidy, as determined by the United States Department of Housing and Urban Development. [Eff DEC 03 2001 (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §983.7)]

§15-185-93. Notification of project-based assistance. (a) The corporation shall publish requests for applications to participate in the

section 8 project-based voucher program in a newspaper of general circulation once a week for three consecutive weeks. The advertisement shall state the number of vouchers available for project-based assistance; whether applications will be accepted for rehabilitation, new construction, or existing units; state the selection criteria; and specify an application deadline of at least thirty days after the date the advertisement is last published.

(b) The corporation may select units to which assistance is to be attached, without advertising under paragraph (a) of this section and without applying the selection factors otherwise required under section 15-185-95, if attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the United States Housing Act of 1937. [Eff **DEC 03 2001** Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §983.51)

§15-185-94 Applications for project-based assistance; information required. (a) Applicants desiring section 8 project-based voucher assistance shall submit to the corporation an application, on forms provided by the corporation, along with any additional information that the corporation determines to be applicable.

(b) Applicant information may include, but is not limited to the following:

- (1) Name and address of the eligible owner and other project principals and officers and principal members, shareholders, investors, and other parties having a substantial interest in the ownership of the project, and evidence of the applicant's status as a corporation, partnership, joint venture or other business organization;
- (2) Certification showing that the above-mentioned parties are not on the United States General Services Administration list of parties excluded from federal procurement

and non-procurement programs; a disclosure of any possible conflict of interest by any of these parties that would be a violation of the agreement or the housing assistance payments contract;

- (3) To the extent available, certified copies of the applicant's organizational documents, including its articles of incorporation and bylaws, declaration of trust, partnership or limited partnership agreement, together with all amendments thereto and, in the case of nonprofit organizations, a copy of the determination letter from the Internal Revenue Service as to recognition of exemption from federal income taxation.
- (4) A resume of the applicant's experience in the construction or rehabilitation of rental housing projects including a list and a brief description of the projects in which the applicant participated;
- (5) A resume of the applicant's experience in the management of rental housing projects including a list and a brief description of the projects which the applicant manages;
- (6) The name, title, address, and telephone number of the person to whom communications should be addressed;
- (7) Evidence of the applicant's legal authority to incur obligations and to sign and deliver such documents as may be necessary to finance, construct, or rehabilitate the project;
- (8) A current certificate of good standing from the State department of commerce and consumer affairs and tax clearance from the State department of taxation;
- (9) Evidence of the applicant's ability to develop, own, market, manage, and provide appropriate services in connection with housing project;
- (10) Evidence of the applicant's financial ability to complete the project;

- (11) The applicant's ties to the community and support from local community groups;
  - (12) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the applicant or its principals;
  - (13) A description of the applicant's experience or involvement in the provision of supportive services;
  - (14) A statement of the applicant's past or current involvement with the corporation or its predecessors, the housing finance and development corporation or the Hawaii housing authority, and the assistance, if any, received from those entities.
- (c) Project information may include, but is not limited to the following:
- (1) A description of the proposed housing project, including the number of units by square footage, bedroom count, bathroom count, sketches of the proposed building, units plans, listing of amenities and services, and the estimated date of completion;
  - (2) Identification and description of the proposed site, site plan, and neighborhood characteristics;
  - (3) Identification of the census tract in which the project is located;
  - (4) Evidence of site control (such as a deed, agreement of sale, commitment letter, or development agreement);
  - (5) Availability of public services and facilities such as schools, sewers, parks, and fire protection, and the adequacy thereof;
  - (6) If applicable, evidence that the proposed new construction is permitted by current zoning ordinances or regulations or evidence to indicate that the needed re-zoning is likely and will not delay the project;

- (7) The proposed contract rent per unit, including an indication of which utilities, services, and equipment are included in the rent and which are not included. For those utilities that are not included in the rent, an estimate of the average monthly cost for each unit type for the first year of occupancy;
- (8) A signed certification of the owner's intention to comply with Title VI of the Civil Rights Act of 1966, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, Section 3 of the Housing and Urban Development Act of 1968, and all applicable federal requirements listed in 24 C.F.R. §983.11, which is incorporated by reference and attached as Exhibit L;
- (9) A statement from the owner certifying the number of persons, businesses, non-profit corporations occupying the property on the date of submission of the application; the number of persons displaced, temporarily relocated or moved permanently within the building complex; estimated cost of relocation payments and services; the funding source of relocation activities; and the name of the organization that will carry out the relocation activities;
- (10) The owner's plan for managing and maintaining the units;
- (11) Evidence of financing or lender interest and the proposed terms of financing;
- (12) The proposed term of the housing assistance payments contract;
- (13) If applicable, a relocation plan that includes steps that will be taken to minimize the displacement of households, businesses, nonprofit organizations, and farms as a result of the project; and
- (14) Such other information as the corporation deems necessary. [Eff DEC 03 2001 ]

(Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §§983.3, 983.6, 983.51)

§15-185-95 Review and screening of applications.

(a) Applications shall be time and date stamped and assigned a number.

(b) Applications shall be screened for completeness (i.e., submission of information required under sections 15-185-92 and 94). Applications that do not meet the application submission deadline or information requirements shall be rejected by the executive director.

(c) The corporation shall review each application and any additional information submitted by the applicant or obtained from other sources in its review of each application. Additional information or data may be requested and the corporation may independently verify any or all information supplied by the applicant. [Eff DEC 03 2001] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §983.51)

§15-185-96 Selection of project applications.

(a) Based upon the review of the applications, documents, and any additional information submitted by the applicants or obtained from other sources by the corporation, the executive director shall prepare a recommendation to the board to attach section 8 voucher assistance to specific projects.

(b) The board shall review the recommendation of the executive director and, if the board determines that the project-basing of section 8 voucher assistance for a specific project is consistent with the public housing agency plan and the goals of deconcentrating poverty and expanding housing and economic opportunities, it may approve the application and authorize the executive director to allocate an appropriate amount of section 8 voucher funding, subject to such terms and conditions as it deems necessary or appropriate to assure compliance with 24 C.F.R. part 983 and these rules.



(c) Upon the board's approval to allocate section 8 voucher funding to an applicant, the executive director shall notify the applicant of the allocation. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §983.52)

§15-185-97 Agreement to enter into housing assistance contract. (a) The corporation shall enter into an agreement with the selected project owner prior to the start of any new construction or rehabilitation.

(b) After the agreement has been executed, the owner shall promptly proceed with the construction or rehabilitation work as provided for in the agreement. If the work is not promptly commenced, diligently continued, or completed, the corporation may terminate the agreement or take other appropriate action. (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §983.101; Pub. Law 106-377, 114 Stat. 1441)

§15-185-98 Eligibility and selection of tenants.

(a) Tenants in a section 8 project-based voucher assisted unit shall meet the eligibility criteria set forth in section 15-185-22.

(b) The corporation may use the section 8 tenant-based waiting list as set forth in section 15-185-26. [Eff **DEC 03 2001**] (Auth: HRS §201G-15) (Imp: HRS §201G-15; 24 C.F.R. §983.203)

## SUBCHAPTER 9

### MISCELLANEOUS PROVISIONS

§15-185-201 Severability. If any part, section, sentence, clause, or phrase of this chapter, of its application to any person or transaction of other circumstances is for any reason held to be

§15-185-201

unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the application of this chapter to other persons or transactions or circumstances shall not be affected. [Eff **DEC 03 2001** ] (Auth: HRS §201G-15) (Imp: HRS §201G-15)

§15-185-202 Number. The use of all words used in the singular shall extend to and include the plural. [Eff **DEC 03 2001** ] (Auth: HRS §201G-15) (Imp: HRS §1-17)



## Attachment D

### 4-III.C. SELECTION METHOD

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the PHA will use [24 CFR 982.202(d)].

#### **[Local Preferences [24 CFR 982.207; HCV p. 4-16]**

PHAs are permitted to establish local preferences, and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.]

#### PHA Policy

[Each preference is of equal weight and an applicant who qualifies for any of the preferences shall receive a voucher before any other applicant who is not so qualified regardless of (1) Place on the waiting list; or (2) date or time of submission of an application.]

Eligible applicants shall be certified in the order of the dates and times in which their applications are received.

[The PHA will offer a preference to any family that is:

- ~~Involuntarily Displaced:~~ Involuntarily displaced applicants are applicants who have been involuntarily displaced and are not living in standard, permanent replacement housing, or will be involuntarily displaced with no more than 12 months from the date of verification by the PHA.

Families are considered involuntarily displaced if they are required to vacate housing as a result of:

1. ~~A disaster (fire, flood, earthquake, etc.) that has caused the unit to be uninhabitable.~~
2. ~~Federal, state or local government action related to code enforcement, public improvement or development.~~
3. ~~Action by a housing owner which is beyond an applicant's ability to control, and which occurs despite the applicant's having met all previous conditions of occupancy, and is other than a rent increase.~~

If the owner is an immediate family relative and there has been no previous rental agreement and the applicant has been part of the owner's family immediately prior to application, the applicant will not be considered involuntarily displaced.

For purposes of the definitional element, reasons for an applicant having to vacate a housing unit include, but are not limited to:

- ~~Conversion of an applicant's housing unit to non-rental or non-residential use;~~
- ~~Closure of an applicant's housing unit for rehabilitation or non-residential use;~~

Notice to an applicant that s/he must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy;

Sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or

Any other legally authorized act that results, or will result, in the withdrawal by the owner of the unit or structure from the rental market.

4. To avoid reprisals because the family provided information on criminal activities to a law enforcement agency and, after a threat assessment, the law enforcement agency recommends rehousing the family to avoid or reduce risk of violence against the family.

The family must be part of a Witness Protection Program, or the HUD Office or law enforcement agency must have informed the PHA that the family is part of a similar program.

The PHA will take precautions to ensure that the new location of the family is concealed in cases of witness protection.

5. By hate crimes if a member of the family has been the victim of one or more hate crimes, and the applicant has vacated the unit because of the crime or the fear of such a crime has destroyed the applicant's peaceful enjoyment of the unit.

A hate crime is actual or threatened physical violence or intimidation that is directed against a person or his property and is based on the person's race, color, religion, sex, national origin, disability or familial status, including sexual orientation and occurred within the last 12 months or is of a continuing nature.

6. Displacement by non-suitability of the unit when a member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit and the owner is not legally obligated to make changes to the unit.

Critical elements are: entry and egress of the unit and building/a sleeping area/a full bathroom/a kitchen if the person with a disability must do their own food preparation/other.

7. Due to HUD disposition of a multifamily project under Section 203 of the Housing and Community Development Amendments of 1978.

In order to receive the displacement preference, applicants who have been displaced must not be living in "standard, permanent replacement housing."

Standard replacement housing is defined as housing that is decent, safe and sanitary, in accordance with the Housing Quality Standards, that is adequate for the family size according to local and state code, and that the family is occupying pursuant to a written or oral lease or occupancy agreement.

Standard replacement housing does not include transient facilities, hotels, motels, temporary shelters, and (in the case of Victims of Domestic Violence) housing occupied by the individual who engages in such violence.



It does not include any individual imprisoned or detained pursuant to State Law or an Act of Congress. Shared housing with family or friends is considered temporary and is not considered standard replacement housing.

- **Victims of Domestic Violence:** The PHA will offer a local preference to families that includes victims of domestic violence. To qualify for this preference, the family must have:

Actual or threatened physical violence directed against the applicant or the applicant's family by a spouse or other household member who lives in the unit with the family must have occurred within the past 12 months or be of a continuing nature.

The family must have been displaced as a result of fleeing violence in the home or they are currently living in a situation where they are being subjected to or victimized by violence in the home.

The applicant must certify that the abuser will not reside with the applicant unless the PHA gives prior written approval.

Applicants must be participating or have graduated from a program with case management in a domestic violence shelter or clearance house.

- **Homelessness:** Homeless applicants are families who lack a fixed, regular and adequate nighttime residence and

Have a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations (including welfare hotels, congregate shelters and transitional housing), or an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not ordinarily used as a sleeping accommodation for human beings.

Families are eligible for this preference if they are participating or have graduated from a transitional or supportive services housing program.

Homeless families may maintain their place on the waiting list while completing a transitional housing program.

Families who are residing with friends or relatives on a temporary basis will be included in the homeless definition.

Persons who reside as part of a family unit shall not be considered a separate household.]

### **Income Targeting Requirement [24 CFR 982.201(b)(2)]**

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during the PHA's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, a PHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

#### **PHA Policy**

The PHA will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met.

### **Order of Selection**

The PHA system of preferences may select families either according to the date and time of application, or by a random selection process [24 CFR 982.207(c)]. When selecting families from the waiting list PHAs are required to use targeted funding to assist only those families who meet the specified criteria, and PHAs are not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

#### **PHA Policy**

Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the PHA's hierarchy of preferences, if applicable. Within each targeted funding [~~or preference~~] category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the PHA. Documentation will be maintained by the PHA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that the PHA does not have to ask higher placed families each time targeted selections are made.

#### **4-III.F. COMPLETING THE APPLICATION PROCESS**

The PHA must verify all information provided by the family (see Chapter 7). Based on verified information, the PHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, or targeted admission~~[, or selection preference]~~ that affected the order in which the family was selected from the waiting list.

##### PHA Policy

If the PHA determines that the family is ineligible, the PHA will send written notification of the ineligibility determination immediately of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. targeted funding, extremely low-income), the family will be returned to its original position on the waiting list. The PHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

If the PHA determines that the family is eligible to receive assistance, the PHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.

**Attachment E is forthcoming**

Attachment E is forthcoming